

Indexed as: Sidhu (Re)

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

IN THE MATTER OF a Hearing directed
by the Executive and Complaints Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 36(1) and 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. PURURSTHOTAM SINGH SIDHU

PANEL MEMBERS: DR. R. MACKENZIE(CHAIR)
DR. N. DE
DR. I. BAXTER
P. BEECHAM
G. DEGROOT

Hearing Dates: May 8 – 10, 2002
July 2 & 3, 2002

Decision/Released Date: July 5, 2002

Penalty Hearing Date: July 11, 2002

Penalty Decision/Released Date: July 22, 2002

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

This matter was heard May 8 to 10 and July 2 and 3, 2002 before the Discipline Committee of the College of Physicians and Surgeons of Ontario, at Toronto. The Committee delivered its written decision finding that the member was guilty of professional misconduct on July 5, 2002 and held a hearing regarding penalty and costs on July 11, 2002. The Committee delivered its written order regarding penalty and costs on July 22, 2002 and indicated that reasons for decision and order would follow.

PUBLICATION BAN

The Committee made an order under s.47 of the Code that no person shall publish the identity of the complainant or any information that could disclose her identity. An order under s.45 of the Code that no person shall publish the name of the physician or any information that might identify his ethnic or cultural background was made by the Committee at the commencement of the hearing with reasons in writing, but this order was revoked at the conclusion of the hearing.

ALLEGATIONS

In the Notice of Hearing it was alleged that Dr. Purushotam Singh Sidhu has committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991* (the "Code"), in that he has sexually abused a patient;
2. under clause 51(1)(a) of the Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that he has been found guilty of an offence that is relevant to his suitability to practise;
3. under paragraph 1(1)34 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, S.O. 1993 ("O. Reg. 856/93"), in that he engaged in conduct unbecoming a physician
4. under paragraph 1(1)16 of O. Reg. 856/93, in that he falsified records relating to his practice;

5. under paragraph 1(1)33 of O. Reg. 856/93, in that he engaged in acts relevant to the practice of medicine that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

It was also alleged that Dr. Sidhu is incompetent as defined by subsection 52(1) of the Code, in that his care of a patient displayed a lack of knowledge, skill or judgement or disregard for the welfare of a nature or to an extent that demonstrates that he is unfit to continue in practise or that his practice should be restricted.

In final submissions to the Committee, Counsel for the College withdrew the allegation of incompetence.

PLEA

Dr. Sidhu pleaded not guilty to all allegations.

EVIDENCE

At the outset of the hearing, three (3) joint document books were entered as exhibits and presented to the Committee. One of these exhibits contained notices of prior criminal convictions of Dr. Sidhu and sentencing dispositions. A summary of these convictions is as follows:

1. December 1995, Impaired Driving. Sentenced June 12, 1997 to \$500 fine and 3-month driver's licence suspension.
2. May 1996, Assault of his wife and daughter with a weapon. Sentenced June 10, 1997 to 2-years probation and prohibition from possessing firearms for 5 years.
3. June 1997, Failure to comply with probation. Sentenced June 5, 1997 to 1 day in custody and 18 months probation.
4. June 1997, Failure to provide a breath sample. Sentenced June 17, 1997 to 14 days in custody, a 2-year driver's licence suspension and 18 months probation.
5. January 1999, Assault on wife and daughter with a weapon. Failure to comply with probation. Sentenced June 16, 1999 to 73 days of pre-trial custody, 3-years probation and 10-years prohibition on possession of firearms

6. May 2000, Breach of probation. Sentenced to \$500 fine.

The Document Books contained copies of two applications to the College completed by Dr. Sidhu to obtain a medical licence to practice. These were completed on July 7, 1996 and on June 9/10, 1997. In each instance, Dr. Sidhu stated that he had never been convicted of an offence, and that there were no pending criminal charges against him. He also stated that he had not been under treatment for abuse of, or addiction to alcohol or controlled substances. Both applications were accompanied by declarations attesting to the truth of the statements contained in the applications and signed in the presence of a Commissioner of Oaths.

The Committee had before it as well copies of Dr. Sidhu's medical records that pertained to the complainant in this case. A forensic report from an expert in handwriting analysis was also submitted as an exhibit. The expert document examiner completed an extensive review of these same medical records and concluded that the overall discrepancies in ink usage, dating errors and formatting of appointment notes suggested the addition of information to existing appointment notes and complete backdating of other pages. In addition, the pattern of dating errors was consistent with the preparation of documents as much as one (1) or two (2) years after the fact. The defence did not enter any expert evidence to challenge these findings by the document examiner.

The Committee also had before it a number of other exhibits, some of which are referenced in the reasons that follow. The Committee heard the testimony of the complainant and Mr. M. called as witnesses by the College, and the testimony of Dr. Sidhu and Ms. D., called as witnesses by the Defence. Additional witnesses referenced below were called in the penalty part of the hearing.

WITNESSES CALLED BY THE COLLEGE

The Complainant

The complainant is a middle-aged woman who emigrated to Canada in or about 1970.

In April of 1997, the complainant sustained a workplace injury and remained off work for six weeks. When she returned to modified duties, she felt that her managers mistreated her and that they were unsympathetic to her continuing disability. Over the next several months, she became progressively more anxious and depressed, culminating in an

emergency admission to the psychiatric department of another community hospital at the end of 1997.

On the day after her admission, she was introduced to Dr. Sidhu, who was a psychiatrist at the hospital. He assumed her primary care during the hospitalization and, subsequently, discharged her on six days later. She was sent home on a number of psychiatric medications. Following discharge, Dr. Sidhu arranged for the complainant to return to see him as an out-patient. The day following her discharge, she became quite upset after a call from her claims adjudicator with the WSIB. She returned to the hospital and was seen by Dr. Sidhu. Dr. Sidhu called the adjudicator on her behalf and reassured the complainant that he would assist her in her claim for compensation. She felt very relieved by this and was able to return home.

The complainant returned to see Dr. Sidhu for her first out-patient appointment at the hospital a few days later. During her initial appointments, Dr. Sidhu would simply discuss her treatment and adjust her medication. Towards the end of the year, she noticed that his behaviour changed towards her. He began asking intimate questions about her living arrangements and sexual relationship with her husband. She took offence to these questions, stating that she felt Dr. Sidhu was not a sex-therapist and these things were none of his business. At one appointment at the end of the year, Dr. Sidhu put his hand on her thigh. At the next visit, he did the same thing and began rubbing her leg. He told her he wanted to give her a “physical”, but she refused on the basis that she was in too much pain. Early the next year, Dr. Sidhu took her hand, studied her palm and told her, “This is the sign that your marriage is going to end and you will have a new man. That man is the one who is talking to you”.

Three days later, the complainant received a call from Dr. Sidhu requesting that she come to his office to assist him in doing some paperwork. When she resisted, claiming she was unwell, Dr. Sidhu insisted and told her he would help her and would also pay her for her work. She eventually agreed to go, claiming that she was anxious to obtain a letter from Dr. Sidhu authorizing the WSIB to facilitate her return to work. When she arrived at the clinic it was empty, but Dr. Sidhu arrived after being paged and took her into his office. The complainant immediately noticed that his desk was completely clear of any papers and Dr. Sidhu admitted that the “paperwork” comment had been an excuse to get her to come to the office because he “missed her”. At that point, Dr. Sidhu hugged her and kissed her and whispered in her ear, “I love you very much”. The complainant resisted his advances and said she wished to call her husband. Dr. Sidhu prevented her from making the call and gave her \$20 in order to go home in a taxi.

On multiple occasions after that date when she attended appointments with Dr. Sidhu, the complainant testified that he sexually assaulted her by forcibly restraining her, fondling her, sucking her breasts and navel and rubbing her clitoris. She maintained that she knew all the while that this was wrong and that Dr. Sidhu was taking advantage of her because of her vulnerable state. She was adamant that she had no choice but to continue to attend these appointments to achieve her ultimate objective of obtaining a letter from Dr. Sidhu for the WSIB, which would allow her to return to work. She testified that she vehemently resisted his advances on each occasion, but that he was always strong enough to overpower her.

On at least three occasions, Dr. Sidhu requested that the complainant drive him to a local park where they would park in a public area. On each occasion, the complainant testified that Dr. Sidhu fondled her, forcibly removed her clothing and performed oral sex on her. She insists that she vigorously resisted and struck him in attempts to make him stop. In addition, she testified to have screamed loudly at him, but admits that no other people appeared to take notice or come to her assistance. She maintains that Dr. Sidhu would pin her "good arm" behind her neck while he committed these assaults and that his strength prevented her from more actively resisting the assault.

In February 1998, the complainant met Dr. Sidhu in the hospital while she was waiting for a physiotherapy appointment. He insisted that she cancel her appointment and drive him to an unknown destination because he needed to lie down. She did so, stating that she felt compelled to obey him. They ultimately arrived at a local hotel where she accompanied him to the registration desk and from there to a room on the second floor. After entering the room, she asked him for "the letter" and sat down on the bed. She testified that he then jumped on top of her and began rubbing against her. He pulled her pants down and she asked him to stop. Dr. Sidhu then got up and went to retrieve a condom. She testified that Dr. Sidhu then forced her to have sexual intercourse twice. He then received a page from the hospital and left the hotel. She then took his sweater and cigarette pack and drove herself home.

Dr. Sidhu went away during March 1998 to travel to India. Prior to his departure, he instructed the complainant to rent an apartment near to the hospital so she could get away from her family and obtain better sleep. Initially, she said she would not do this, but upon reflection, she decided she should listen to Dr. Sidhu since he was a professional and should know what was best for her. At the end of March, she placed a 2-month rental deposit on an apartment and advised the superintendent that it was to be used by a doctor when he returned from vacation. She next saw Dr. Sidhu in April when she attended an appointment at his office. She brought some papers from WSIB for him to

sign and told him about the apartment. Dr. Sidhu insisted that she take him there immediately and they left in her car and drove to the apartment building. Once within the apartment, Dr. Sidhu proceeded to take off his clothes and forcibly remove her clothes, after which he forced her to have sexual intercourse twice. The complainant testified that she went to the apartment with Dr. Sidhu a further five (5) or six (6) times and that she was sexually assaulted on each occasion. She denies ever staying overnight in the apartment or visiting the apartment by herself.

On another occasion in July 1998, Dr. Sidhu called the complainant at home and asked her to meet him in a parking lot adjacent to his office. She drove there and Dr. Sidhu got in her car. He informed her that his wife had told him to leave their home and he had no money and no place to stay. He asked her for money, but insisted that she give him cash. She cashed some cheques and supplemented this by withdrawing cash from a bank machine and gave Dr. Sidhu \$500.00. She said that she did not ask for or receive an IOU as she trusted Dr. Sidhu to return the money. Afterwards, they drove to several hotels before finally finding a vacancy some distance away. She went in while Dr. Sidhu registered for a room, and she paid for it in cash. She testified that Dr. Sidhu grabbed the receipt from her and kept it.

Dr. Sidhu then took her to the room and, once inside, assaulted her again and forced her to have sexual intercourse twice. When she said she wanted to leave, Dr. Sidhu escorted her to her car, but found that she had locked her keys inside. She offered to call CAA, but Dr. Sidhu would not allow her to do this for fear there would be a record of the incident. He then used a rock to break the car window. He encouraged NA to report the incident to police and say that vandals had broken into the car and stolen her property. She then drove home and called the police. She testified that she terminated the call before giving any identifying information because she was ashamed about participating in a dishonest act. During cross-examination, she was taken to a formal report of the police complaint, which clearly shows that a full report had been made including identifying information. The complainant insisted that the report must have been falsified or that they had obtained the information from some other source. No insurance claim was made.

Two days later, the complainant attended a scheduled appointment at Dr. Sidhu's office and found it locked. She called him at the same hotel and he told her to come there as he was seeing patients in the hotel room. When she arrived, he was ironing clothes and admitted he had told her this to trick her into coming. Once again, he forced her onto the bed and "raped" her twice. She testified that she again asked him for her "letter" and that he said he would do it later that day.

The complainant provided the exact dates for these hotel incidents to the College investigator. She also described in detail the appearance of both hotels as well as the interior of the rooms and the views from the window of each room. Subsequently, the investigator obtained receipts for both room rentals issued in Dr. Sidhu's name. These were provided as evidence for the Committee's consideration. Photographs of both hotels, as well as the room interiors and views from the windows were taken by the investigator after the descriptions had been provided by the complainant. These photographs were entered as exhibits and the Committee took note that her descriptions corresponded accurately to the photographs.

In the fall of 1998, Dr. Sidhu called the complainant and asked her to meet him in a coffee shop. When she arrived, he told her to drive to an unknown destination. They ultimately arrived at yet a different hotel and Dr. Sidhu registered for a room while the complainant waited at the elevator. They went up together to the room and, once inside she again asked him for "the letter". He responded by throwing her on the bed, forcibly removing her clothes and performing oral sex. Afterwards, she asked again for the letter and he said he would prepare it immediately. He instructed her to leave and return at 6:00 p.m. to get the letter. She then drove home and took the bus back at 6:00 p.m. When he opened the door, he grabbed her, pulled her inside and began assaulting her again. He then forced her to have intercourse twice. He then attempted to have anal intercourse with her but she was successful in preventing him from doing so. Around 9:00 p.m., he suggested they order an in-house movie. The complainant then describes watching a pornographic movie in the room together. Dr. Sidhu asked her to perform oral sex on him as she had seen in the movie but she refused. At midnight, she said she was hungry, so Dr. Sidhu ordered a pizza, which was delivered to the room. Afterwards, she testified he began licking her clitoris again but, ultimately, got so tired that he got into bed and fell asleep. She slept herself. When she woke in the morning, she said she was going to leave but he insisted on having intercourse with her once again and retrieved a condom from the garbage to do so. The complainant maintains that Dr. Sidhu used multiple new condoms over the course of the night and reused a number of these a second time. She eventually left the hotel at approximately 10:00 a.m. and went home by bus.

The complainant was uncertain of the exact date of this incident, but recalled that it occurred sometime before Thanksgiving. A hotel receipt in Dr. Sidhu's name for October of 1998 was entered as an exhibit at the hearing. Hotel photographs were again presented to the panel that were consistent with descriptions provided to the investigator by the complainant.

When asked in cross-examination why she did not try to leave the hotel room when Dr. Sidhu was asleep, she testified that she made such an attempt, but when Dr. Sidhu heard her in the bathroom, he got up and forced her back to bed. The Committee noted that, during her examination in chief, she had said that she had slept the entire night and only went to the bathroom when she awoke in the morning.

During cross-examination, the complainant insisted that she vigorously resisted Dr. Sidhu's assaults on each and every occasion. In each instance, she would yell at him to stop and attempt to hit or slap him. However, he always overpowered her.

After this incident, the complainant recalls next seeing Dr. Sidhu for an appointment in his office in late October of 1998. She testified that he fondled her on this occasion. She did not see him again until early December of 1998. Late in November, she recalls receiving a call from her WSIB adjudicator reminding her that she needed a letter from Dr. Sidhu in order to return to work. In early December, she called and made an appointment with Dr. Sidhu a few days later. When she came to that appointment, Dr. Sidhu prepared a handwritten letter for her. After finishing the letter, he grabbed her and began assaulting her again. He pulled her onto his lap, grabbed her hair and tried to force her to perform oral sex on him. When she refused, he made her masturbate him. Once he had ejaculated, he pushed her off his lap on to the floor. The complainant states that she then stood up and said, "From now on you are not my doctor. Thank you for my letter." She testified he then threatened her by saying, "Don't ever come to this area again or I won't be responsible for what happens to you". The Committee took particular note of a comment the complainant made at this point in her testimony wherein she beseeched the College to persuade Dr. Sidhu to "remove this ban on me", as she is fearful that she cannot travel in safety as long as it is in effect.

The complainant denies ever seeing Dr. Sidhu again after that date. She did call at some point afterwards to request her file and complain to Dr. Sidhu about his actions. She testified he hung up on her.

The complainant vehemently denied ever telling Dr. Sidhu that she was experiencing any marital difficulties. When she was taken to an entry in her medical record that documents marital discord she replied, "That is a big lie. He should be ashamed of himself. My husband is a caring and loving man and we never had any problems". Later during cross-examination, the complainant denied ever having suspected her husband of infidelity. She also denied ever leaving her husband to stay in a shelter. She further denied ever calling the police because of a domestic dispute. When asked to explain a police "Occurrence Report" that documented the following: "assault...suspects husband of

infidelity...staying in women's shelter", she became quite angry and suggested that the police had falsified the report. At that point, she admitted that she had taken refuge in a woman's shelter after the night she had been in the hotel with Dr. Sidhu, and had stayed there for an extended period. She denied staying in the shelter because of any dispute with her husband, but she was unclear as to the reason why she did so. She maintained that her suspicions of her husband's infidelity stemmed from a misunderstanding on her part.

In May 1998, Dr. Sidhu wrote a letter to the WSIB indicating that he was transferring her care back to her family physician. The complainant admits that she then asked her husband to go to Dr. Sidhu to ask him to take her back as a patient. She testified that she was fearful that her claim with WSIB would be jeopardized if she changed doctors. During cross-examination, it was pointed out that during the same period of time that she was under Dr. Sidhu's care, she changed family doctors on three occasions. She acknowledged that she was aware that she could change doctors if she wished, but she was afraid to do so because Dr. Sidhu had threatened her with retaliation if she left.

Dr. Sidhu wrote the WSIB again in September of 1998 and communicated that the complainant had fully recovered from her psychiatric problems and could return to modified work.

The complainant admitted during cross-examination that she referred several patients, both male and female, to Dr. Sidhu during 1998. She claimed that she did so because Dr. Sidhu needed referrals at this time to build up his practice. When asked how she could have referred other women to a physician who was violently and repeatedly assaulting her sexually, she admitted that she had made a mistake. She maintains that her mind was "fogged up" and that she was "under his spell".

When asked why she never told anyone about the assaults, including other physicians and psychiatrists, she replied that she was "too ashamed. I was afraid of him. My lips were sealed." She claimed that Dr. Sidhu threatened to commit her to a psychiatric institution if she ever revealed what had happened. When asked why she would continue to subject herself to these repeated and inevitable assaults, she replied "He made me his slave. He was my master. I had to obey him, he was very powerful."

The complainant testified that she was unaware of Dr. Sidhu's problems with alcohol during the period of their relationship and that she had never witnessed him drinking or being intoxicated in her presence.

MR. M.

Mr. M. was an investigator for the CPSO for 2 years and was assigned to the investigation of this case in April 2000. Based on the complainant's initial statement to the College, he requested registration information from the three (3) hotels that she claimed to have visited with Dr. Sidhu. His requests were declined in each instance. Subsequently, Mr. M. obtained search warrants through which he obtained the hotel receipts that were entered as exhibits to this hearing. At no time during the investigation did Mr. M. provide any information relative to these receipts to the complainant. He acknowledged that he accompanied the complainant to all three hotels in August 2000 at which time she confirmed the locations. He also testified that he took the photographs of the hotels and views of the rooms that were entered as exhibits to the hearing, but at no time prior to the hearing did he show these photographs to the complainant.

WITNESSES CALLED BY THE DEFENCE**DR. PURURSTHOTAM SINGH SIDHU**

Dr. Sidhu was born in India and received his medical degree there in 1980. He subsequently took specialty training and qualified as an anaesthetist in 1984. He immigrated to Canada in 1985. From 1985 to 1991, he worked in a non-medical capacity. In 1991, he entered a psychiatric residency program through the University of Toronto and received his fellowship in Psychiatry in 1997. In December 1997, he accepted a position as Clinical Assistant in psychiatry at a community hospital. In April 1998, he opened his own consulting practice in a medical office nearby.

Dr. Sidhu was married in 1983 and has three children. During the period of his residency, he experienced significant personal and financial stresses attempting to cope with the pressures of his training program and the financial commitments to his family. In 1994, he testified that he became clinically depressed and began drinking heavily. At the same time, he began seeing a psychiatrist and continued to do so for the next 4 to 5 years. In May 1995, he took three months off from his residency program to accompany his parents back to India. In 2000, he entered into a legal separation agreement with his wife, the terms of which require him to pay \$7500 per month in spousal and child support as well as \$16,000 per year in tuition fees.

Dr. Sidhu acknowledges all the criminal convictions that are summarized in the evidence above. He maintains that all incidents evolved from his abuse of alcohol. He admits that he suffers from a severe addiction to alcohol that results in a pattern of heavy binge drinking. Each of his convictions occurred during one of these binges. Dr. Sidhu testified that he almost always drank alone and usually on weekends. He was capable of maintaining sobriety for sustained periods of time and never attended to patients when he was intoxicated. In July 1996, after being charged with assaulting his wife and daughter, he attempted suicide and was admitted to hospital. Upon discharge, he was transferred to a residential treatment facility for substance abuse where he remained for a month. At the completion of this program, he was referred to the Physician Health Program (PHP) of the Ontario Medical Association, but he declined to participate at that time because he felt the demands were too rigorous. He did manage to stay sober for several months following completion of the recovery program.

Dr. Sidhu admitted that he completed the two applications for registration with the CPSO knowing that he was signing false declarations in each instance. He explained that he believes he was still in denial of his alcoholism at the time and regrets that he did so. He denies that he was intoxicated at the time that he swore the declarations. He characterizes these misrepresentations as errors in judgement. On cross-examination, Dr. Sidhu admitted that he deliberately falsified the applications out of a fear that he would not be granted a licence if he answered truthfully. He also admitted that on the June 10, 1997 application he actually signed the declaration in front of a Commissioner of Oaths on the same day that he appeared in court on assault charges.

With respect to the medical records, Dr. Sidhu denied that any of his notes were in any way revised or rewritten after the fact, in spite of the evidence in the uncontested expert report of the document examiner provided by the College. There are multiple notes in the record in which the date "1999" has been corrected to "1998" or crossed out and replaced with "1998". Dr. Sidhu testified that, although all of these notes were written in 1998, he mistakenly recorded the date as 1999. When he was reviewing the notes prior to this hearing in 2000, he recognized the error and made the appropriate corrections. He maintained throughout his testimony that the alterations of dates were the only changes that were made at a later date and remained adamant about this throughout vigorous cross-examination. However, when Counsel for the College pointed out a date of "1999"

within the body of a note dated originally July 24, 1998, Dr. Sidhu admitted that this particular note (2 pages) was in fact a revision after the fact. When it was then suggested that, in fact, the majority of the remainder of the clinical record was rewritten at a later date, Dr. Sidhu reiterated his position that only that particular selected entry was revised.

With respect to the allegations made by the complainant, Dr. Sidhu agrees that he was her psychiatrist from December 1997 until December 1998 and, for the most part, accepts the dates provided by the complainant as accurate with respect to their clinical encounters in the hospital and at his private office. He describes the nature of the therapeutic relationship as one of provision and supervision of medication along with supportive psychotherapy. Dr. Sidhu vehemently denied that he ever had any sexual relationship with her. He also denied ever being with her in any car, hotel or apartment. He also denied ever borrowing money from her.

Dr. Sidhu testified that, at one point during the therapy, he became concerned about the complainant's behaviour towards him. He referred to a number of very detailed notes that are dated in May of 1998 in which he documents his concerns that she was becoming physically suggestive, wearing makeup to appointments, making inappropriate comments and asking intimate personal questions. He insisted that these notes were all made contemporaneously with the actual appointment dates even though the actual date was recorded in error and subsequently corrected when he was reviewing his notes at a later date. The Committee also noted that there were sometimes two separate notes for the same date and that his file contained both typewritten and handwritten notes for most of the visits. Dr. Sidhu admitted that the typewritten notes were prepared when he was reviewing the file following the complainant's complaint to the College. He maintained that he was merely providing a transcript for the original handwritten notes in order to assist the College investigation. However, he agreed during cross-examination that the typewritten notes included additional information that he added at the time the transcriptions were made. Dr. Sidhu denied doing this in an effort to mislead the investigators. He characterizes these revisions as "corrections" or "clarifications" of the original documents.

Dr. Sidhu testified that he formally transferred the complainant's care back to her family physician in July 1998 because he was becoming uncomfortable continuing to treat her.

He acknowledged, however, that he agreed to “take her back” after a personal entreaty from the complainant’s husband.

During the entire year of 1998, Dr. Sidhu testified that he had a serious binge-drinking problem. Although he was usually able to confine his drinking to weekends, he sometimes continued into the balance of the week. On some of those occasions he admits that he would check into a hotel for a day or two in order to avoid his wife’s disapprobation. He testified that he never attended patients when he was intoxicated and would call to cancel his appointments during extended binges. He recalls, on occasion, checking into a hotel with his wife, usually to celebrate special occasions such as anniversaries. He denied ever being in a hotel room with anyone else, including the complainant and denied ever “seeing patients” in a hotel. Dr. Sidhu acknowledged that he stayed in the three hotels for which receipts have been entered as exhibits, but has no idea how the complainant could have known he was there.

Dr. Sidhu recalls the complainant asking him at different times to write letters on her behalf to the WSIB. In most instances, he declined claiming that physicians respond to requests directly from the WSIB for reports, not from the patients.

Dr. Sidhu described to the Committee his continuing struggle with alcoholism. On April 19, 2001, he entered into a contract with the PHP and managed to maintain sobriety for an extended period of time. He admits that he relapsed in March of 2002 and self-reported this to his case manager at the PHP. He then complied with recommended treatment until May 17, 2002 when he relapsed again. At that point, he left the country to go to India and returned shortly before the conclusion of this hearing, which began on July 2, 2002. He has subsequently met with his case manager with PHP and has resumed his recovery treatment.

MS. D.

Ms. D. is a social worker who works for the Physicians’ Health Program, which is an OMA service that provides counselling, advocacy and monitoring for physicians recovering from substance abuse. She has been acting as case manager for Dr. Sidhu since he enrolled in the program in April 2001. Ms. D. testified that Dr. Sidhu entered into a contract with PHP on April 17, 2001, which required him to meet with her on a monthly basis. In addition, Dr. Sidhu was required to attend weekly self-help groups.

She indicated that Dr. Sidhu did very well for almost a year after initial enrolment and showed significant improvement. Unfortunately, he relapsed in March 2002 and again in May 2002 when she lost contact with him. She subsequently learned that he had gone to India. Upon his return in June 2002, she met with him and set out the program's requirement for re-enrolment, which necessitates that he be in stable remission and undergo a complete addiction assessment by the Medical Director of PHP.

FINDINGS OF THE COMMITTEE

The Committee found that Dr. Pururshotam Singh Sidhu was guilty of professional misconduct:

1. under clause 51(1)(b.1) of the *Health Professions Procedural Code*, which is Schedule 2 to the *Regulated Health Professions Act, 1991* (the "Code"), in that he has sexually abused the complainant;
2. under clause 51(1)(a) of the Code, in that he has been found guilty of offences relevant to his suitability to practise, viz. assaults upon his wife and daughter and breaches of probation;
3. under paragraph 1(1)16 O. Reg. 856/93, in that he falsified records relating to his practice, including clinical records and Application for Certificates of Registration to the College; and
4. under paragraph 1(1)33 O. Reg. 856/93, in that he engaged in acts relevant to the practice of medicine that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee finds Dr. Sidhu not guilty of the allegation under paragraph 1(1) 34 of Ontario Regulation 856/93, that he engaged in conduct unbecoming a physician, which was presented in the alternative to allegation #2 above on which it found Dr. Sidhu guilty of professional misconduct. If the Committee had not found Dr. Sidhu guilty under allegation #2, it would have found him guilty of this allegation of professional misconduct. The allegation of incompetence was withdrawn.

REASONS FOR DECISION

Allegation #1

The panel is aware of the standard of proof required to make a finding of guilt in any allegation against a member of the College. This standard, which was articulated in “Bernstein”, has been cited in many previous decisions of this Committee. The onus is on the College to prove the allegations, based on clear and convincing evidence. The panel must be reasonably satisfied that the College has met this burden of proof based on the totality of the evidence. In a disciplinary proceeding, the panel must make its finding on the balance of probabilities, which falls short of the criminal standard of “beyond a reasonable doubt”.

The Committee heard a great deal of evidence on the allegation of sexual abuse, mostly from the complainant and the accused physician. In weighing all of this evidence, the issue of credibility posed a critical challenge for the Committee. In virtually all instances of sexual abuse by physicians, the alleged acts take place in private. There are rarely witnesses available to either corroborate or refute the evidence.

In this case, the Defence argued that the complainant’s description of the purported sexual encounters was confusing and, at times preposterous. She described the assaults as repeated, coercive and violent. Counsel for the defence submitted that it is improbable to believe that any woman would willingly subject herself to this treatment time after time, while maintaining that each and every assault was forced upon her. He pointed out the numerous opportunities she had to report the abuse to other physicians and caregivers, including other psychiatrists. He characterized her almost obsessive pursuit of “the letter” as an illogical and implausible explanation for her subjecting herself to these repeated assaults.

The Committee admits to being troubled by many of the details of the complainant’s portrayal of the purported assaults. However, in spite of some of the language used by the complainant to describe what happened, the Committee does not accept that the true nature of the acts was as violent or at the extreme end of abusive behaviour as suggested by the defence. The complainant admits that she willingly attended at Dr. Sidhu’s office knowing that he had coerced her into sexual acts at virtually every previous appointment. She also acknowledged that she willingly accompanied him to the three hotels in which she also claims to have been assaulted. At the third hotel, the complainant testified that she even drove herself home after being assaulted by Dr. Sidhu and returned at 6:00 p.m. at his request. She was clearly not kidnapped and forcibly restrained by Dr. Sidhu.

Although she maintains that she was forced to stay overnight on that occasion, she testified that Dr. Sidhu became tired while performing oral sex on her and then fell asleep. She, in turn, got into bed herself and slept through the night. On her testimony they watched a pornographic movie together and shared a late-night pizza. The Committee did not accept this incident as one of forcible confinement.

On repeated occasions, the complainant claimed that Dr. Sidhu “raped” her. The Committee believes that the complainant uses the term to connote an act of non-consensual sexual intercourse. She stated on more than one occasion that she was afraid of Dr. Sidhu. She clearly stated that she did everything that Dr. Sidhu asked her to do because “he was my master, I was his slave”. This is commonly the case in abusive relationships with physicians. In the Committee’s opinion, it is even more plausible in this case where the cultural mores would place a male physician in a substantial position of power over a female patient. It is open to interpretation what “vigorous resistance” she mounted to his advances. The Committee accepts that Dr. Sidhu’s sexual demands were indeed coercive and, although the complainant may have been unwilling, she appears to have been ultimately passive in her resistance. In the experiences of the Committee it is not uncommon for a patient to return repeatedly to a physician who sexually assault her, and to subject herself to further assaults.

The Committee is even prepared to accept that the complainant may have, at least initially, been a willing participant in a sexual relationship with Dr. Sidhu. She would be fully aware, however, that this would be morally and culturally reprehensible within her own community and incompatible with her own value system. The only way for her to tell the story of what she now recognizes as an abusive power imbalance, is to disavow any consensual aspect to the relationship. Consequently, she may well have exaggerated in her representation of the details of the sexual encounters. In the end, however, the Committee believes that they did take place.

With respect to the issue of “the letter”, the Committee was puzzled by her focus on acquiring this letter from Dr. Sidhu. In the end, however, it concluded that this has little relevance. The complainant may have indeed had a poorly informed opinion that she needed Dr. Sidhu’s assistance to advance her position with the WSIB. In the alternative, it may have allowed her to “save face” to explain why she willingly returned on repeated occasions to be subjected to these sexual assaults.

There are other disturbing aspects to the complainant’s testimony on certain issues. During cross-examination, she vehemently denied ever having any marital difficulties and admonished defence counsel for even suggesting such a thing. She was then

presented with the medical record in which she is quoted as experiencing longstanding relationship issues with her husband. She went on to deny that she had ever suspected her husband of infidelity or that she had ever called the police to intervene in a domestic dispute. When presented with a police incident report from 1998 that stated, "...for past 8 months wife suspected husband of infidelity and wife staying in womens' shelter", the complainant suggested that the police had falsified the report. She claimed that she went to the shelter to get away from Dr. Sidhu and only told the shelter staff she was escaping from her husband in order to protect Dr. Sidhu. Counsel further drew her attention to her own statement to College investigators wherein she stated that she had called police to her home in the 1970's with a complaint that her husband had assaulted her. The Committee was disturbed to note that when confronted with these obvious misrepresentations of the truth, the complainant became very evasive and defensive. At one point, she broke down in tears, asking angrily why counsel was refusing to believe her.

Notwithstanding the reservations about the complainant's credibility on some issues of her testimony, the Committee finds the evidence about her sexual relationship with Dr. Sidhu to be true and the corroborating evidence around the three hotel incidents to be very compelling. The complainant's identification of all three hotels, description of the room views and interior as well as the exact dates of stay (with the exception of the date in October 1998) leads the Committee to only one conclusion. She was in those rooms on those occasions with Dr. Sidhu. She also identified the rental of an in-house movie on one of these hotel visits, and this is the only night where a movie rental appears on any of the invoices from the three hotels. The Committee is satisfied from the evidence of Mr. M. that the complainant could have had no knowledge of Dr. Sidhu being in these hotels on these dates unless she was there with him. The Committee did not accept the defence speculation in the absence of any evidence that she may either have followed him to these hotels or somehow otherwise obtained the receipts from the hotels themselves. The evidence before the Committee was that the complainant's lawyer was himself unable to obtain the hotel receipts, which were obtained by the College investigator only with the assistance of a search warrant.

Counsel for Dr. Sidhu suggested that it was highly improbable that the complainant would be unaware of Dr. Sidhu's alcoholism throughout the entire year of their relationship when there is strong evidence before the Committee that he was engaging in severe binge drinking through all of 1998. The Committee was not persuaded by this argument. By his own admission, Dr. Sidhu drank in isolation and was capable of going long periods of time without drinking. He concealed his illness from patients and

colleagues and never attended patients when he was intoxicated. There is no reason to believe that he was not equally capable of concealing this from the complainant as well.

The issue of Dr. Sidhu's credibility as it relates to his evidence regarding the allegation of sexual abuse is problematic. His entire defence relies upon a wholesale denial of all the allegations made by the complainant. The Committee is satisfied that the College has met its burden of proof in placing the complainant in those hotel rooms with Dr. Sidhu. The Committee rejects Dr. Sidhu's testimony that she was never with him in the hotels. And having accepted that they were together in the hotels, the Committee was not presented with any evidence that would support an innocent explanation for what occurred at those times. On a balance of probabilities, the Committee found that an intimate sexual relationship between Dr. Sidhu and the complainant occurred. Accordingly, the Committee found Dr. Sidhu to have engaged in sexual abuse of his psychiatric patient the complainant.

It was also very clear to the Committee that Dr. Sidhu falsified his clinical records in order to provide a revisionist history of his therapeutic relationship with the complainant. When faced with her allegations, he attempted to put a spin on her clinical interactions with him that would support his position that she was the one who was violating the clinical boundaries, not he. At the very least, the Committee is of the opinion that this represents very strong circumstantial evidence to support Dr. Sidhu's guilt.

Allegations #2, #3, #4 and #5

The Committee accepted the evidence of Dr. Sidhu's criminal convictions as set out above and admitted by Dr. Sidhu. Dr. Sidhu testified that all of these offences stemmed from his addiction to alcohol. The Committee accepts this as an explanation for his behaviour, but under no circumstances can it be construed as an excuse. On two separate occasions, Dr. Sidhu pleaded guilty and was convicted of assault against his wife and daughter. Such violent, antisocial behaviour towards vulnerable victims, perpetrated by an individual in a position of power and trust, must be condemned in the strongest possible manner. There can be no tolerance for such behaviour, whether it be committed under the influence of alcohol or not. It is not behaviour that befits any physician, particularly a psychiatrist who deals with the most emotionally vulnerable patient population.

Dr. Sidhu admits to falsification of his applications for registration with the College. He represents this as an error in judgement resulting from his alcoholism. The Committee categorically rejects this rationalization. Dr. Sidhu was clearly aware of what he was doing and admits he lied in order to avoid the risk of being denied his certificate of registration. His behaviour in this regard is totally self-serving and dishonest.

Dr. Sidhu maintains that the “correction” of dates in the clinical record from 1999 to 1998 was simply to address an innocent error in his initial creation of the notes. Although we are all likely guilty of mistakenly writing the previous year’s date on the checks that we write in January, the idea of erroneously writing the date for the following year on multiple occasions strikes the Committee as totally incredible. Coupled with the uncontested expert report of the document examiner, Mr. Lindbloom, the Committee was therefore satisfied that Dr. Sidhu made wholesale revisions to his medical record in order to manufacture a defence for the allegations set out against him. He then compounded this dishonesty by lying under oath about these revisions. The Committee was particularly appalled at his continuing denial of this falsification when being caught out in his own evidence.

EVIDENCE WITH RESPECT TO PENALTY

Evidence and submissions with respect to penalty were heard before the Discipline Committee of the College of Physicians of Ontario in Toronto on July 4, 2002. Two witnesses, Dr. E. and Dr. S. were called by the Defence to testify on behalf of Dr. Sidhu.

WITNESS IMPACT STATEMENT

Counsel for the College read into the record a witness impact statement in which the complainant outlined how Dr. Sidhu’s abuse has negatively affected her emotional health, her relationship with her family and her ability to trust health care professionals.

DR. E.

Dr. E. received his MD in 1991 and has practiced Family Medicine in Toronto since completing his internship. In 1998, he moved into the same medical building in which Dr. Sidhu carries on his psychiatric practice. Dr. E. has established a professional relationship with Dr. Sidhu and estimates that, since 1998, he has referred approximately 30 to 50 patients to Dr. Sidhu for consultation. Dr. E. feels that Dr. Sidhu has been very

helpful to his patients and provides a valuable service to the ethnically diverse community in which he practices.

DR. S.

Dr. S. is a family physician who has completed a fellowship in addiction medicine and accepts referrals from the PHP. In this role, he provides assessments and treatment recommendations and offers opinions to the PHP with respect to return to work issues for physicians under treatment for substance abuse. Dr. S. saw Dr. Sidhu for an initial assessment for the PHP in January of 2001. Dr. Sidhu subsequently “broke the contract” by returning to India. In April 2001, Dr. Sidhu restarted the program. Dr. S. testified that he saw Dr. Sidhu on a monthly basis from that point onward to monitor his compliance. Dr. S. is satisfied that Dr. Sidhu maintained sobriety from April 2001 until his relapse in March 2002. During that period, his condition improved although, in Dr. S.’s opinion, Dr. Sidhu’s recovery was hampered by the co-morbid condition of mood disorder, for which he is now under the care of a psychiatrist.

Dr. S. offered his opinion to the Committee that Dr. Sidhu could eventually be capable of returning to practice providing that he fulfil the following requirements:

1. Maintain one year of sustained sobriety;
2. Demonstrate the ability to refrain from impulsive behaviour; and,
3. Cooperate in a full psychiatric assessment and subsequent management of his co-morbid mood disorder

In the event that these objectives can be met, then Dr. S. believes that a gradual and supervised reintegration into practice would be a reasonable and appropriate recommendation to make at that time.

DECISION AND REASONS FOR PENALTY

The Committee noted that, under section 51.5 of the Code, revocation is the mandatory penalty for any finding of guilt for sexual abuse that includes sexual intercourse. In this case, the Committee made such a finding and revocation was therefore ordered. However, the Committee wishes to make it clear that, even in the absence of the mandated penalty, it still would have ordered revocation as the appropriate penalty in this case.

The Committee is well aware of the principles of penalty that apply to any professional disciplinary tribunal. These include protection of the public, specific and general deterrence, maintenance of public confidence in the profession and its ability to regulate itself and finally, rehabilitation of the member.

By the year 1998, all members of the medical profession were well aware that, if a physician engaged in serious sexual abuse of a patient, then revocation would be the inevitable penalty. In this instance, the abuse occurred repeatedly over a significant period of time. The complainant was a particularly vulnerable victim, and the fact that the abuse occurred within the context of a psychotherapeutic relationship renders it that much more egregious. The profound impact of sexual abuse upon any vulnerable psychiatric patient was understood and accepted by the Committee. Dr. Sidhu has yet to acknowledge his role in the abusive relationship and, in the Committee's opinion, has demonstrated neither remorse nor insight into the significance of his actions and their impact on his patient. The Committee believes that Dr. Sidhu reconstructed his clinical notes after the fact in order to make it appear that his patient was the one violating boundaries and not himself. This blatant dishonesty and self-serving behaviour suggests that Dr. Sidhu is unable or unprepared to accept responsibility for what occurred in his relationship with the complainant. To satisfy the overriding principles of protection of the public and specific deterrence, revocation is quite simply the only penalty that suffices. Accepting that sexual abuse of a patient is the most fundamental breach of trust in a doctor patient relationship, the Committee feels constrained to deliver an unequivocal condemnation of that breach to the profession as a whole.

In respect of the other allegations proven against Dr. Sidhu, counsel for the College pointed out that Dr. Sidhu's entire professional career has been "bookended" with dishonesty from start to finish. Dr. Sidhu admitted falsifying his initial application for a restricted certificate of registration out of fear that it would not be approved. He then repeated the misrepresentation when applying for a certificate of registration for independent practice. These were premeditated acts, which in no way can be characterized as errors in judgment. College counsel argued that any penalty short of revocation would effectively reward Dr. Sidhu for his dishonesty. The Committee agrees. Doing so would convey a message to other members of the profession that lying is an appropriate alternative to the truth, since a suspension of the privilege to practice is far less punitive than not being able to obtain the privilege at all. In addition, Dr. Sidhu has clearly falsified his medical record and compounded this by lying under oath about these falsifications. The Committee was frankly incredulous that Dr. Sidhu could continue to maintain his innocence in the face of the overwhelming evidence against him.

Dr. Sidhu has been convicted of no less than six separate criminal offences since 1995 including two counts of assault against vulnerable family members. Dr. Sidhu blames all of these incidents on his alcoholism. In the Committee's opinion, Dr. Sidhu has yet to accept responsibility for any of his inappropriate behaviour and believes that his actions were somehow beyond his control.

Counsel for Dr. Sidhu argued that, setting aside the finding of sexual abuse, the other allegations proven against Dr. Sidhu should attract a suspension and restrictions instead of revocation. The defence position is that all the acts that brought Dr. Sidhu before this hearing were related to his addiction, compounded by mental health problems. Defence counsel argued strongly that any penalty should be crafted with rehabilitation of the member as an essential principle. The Committee absolutely rejects this line of reasoning. It did not hear any expert evidence that would advocate a medical opinion that alcoholism is an acceptable cause for domestic assault, sexual abuse of patients, falsification of legal contracts, falsification and recreation of medical records and lying under oath. Perhaps more importantly, the Committee heard no expert evidence to support the theory that rehabilitation of such an addicted individual would in any way protect against recidivism for this type of behaviour. The Committee would be abdicating its duty to protect the public by allowing Dr. Sidhu to continue in practice under even the most restrictive umbrella. The Committee is not insensitive to Dr. Sidhu's medical problems and applauds any efforts he is making towards recovery. However, the egregious nature of his offences necessitate that any rehabilitative efforts take place outside of the profession, not from within. Dr. Sidhu's predatory and impulsive behaviour, his inherent dishonesty and lack of insight or acceptance of responsibility for his actions make him ungovernable as a physician. It is the opinion of the Committee that revocation of Dr. Sidhu's certificate of registration is also the appropriate penalty for its findings with respect to allegations 2, 4 and 5 in the Notice of Hearing.

The Committee also supports as appropriate the College's request for both funding for counselling and an order for costs against Dr. Sidhu. Dr. Sidhu was found guilty of serious allegations of professional misconduct after a lengthy and costly investigation and hearing. The costs awarded are only a partial reimbursement of the actual expense incurred. The Committee does not accept that Dr. Sidhu's financial situation should mitigate against an award of costs. Unfortunate as his financial circumstances may be, he must organize his own affairs with respect to the payment of costs and counselling.

PENALTY ORDER

The Discipline Committee made the following order as to penalty:

1. The Discipline Committee directed the Registrar to revoke Dr. Sidhu's certificate of registration effective immediately;
2. The Discipline Committee required Dr. Sidhu to appear before the panel to be reprimanded, and the fact of the reprimand to be recorded on the register;
3. The Discipline Committee ordered Dr. Sidhu to reimburse the College for funding up to the amount of \$10,000.00 provided for the complainant under the programme required under s. 85.7 of the *Health Professions Procedural Code*, and directed Dr. Sidhu to post security acceptable to the College to guarantee the payment of any amounts Dr. Sidhu may be required to reimburse under this order.

COSTS ORDER

The Discipline Committee ordered Dr. Sidhu to pay to the College within 30 days of the date of this order costs in the amount of \$20,000.00.