

Indexed as: Caverhill (Re)

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

IN THE MATTER OF a Hearing directed
by the Complaints Committee of
the College of Physicians and Surgeons
of Ontario, pursuant to Section 58(2)
of the **Health Disciplines Act**,
R.S.O. 1990, c. H.4.

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. JOHN W. CAVERHILL

PANEL MEMBERS: DR. J.D. CURTIS (Chair)
DR. J.M. THOMPSON
DR. M. GOODMAN
F. HOSHIZAKI

HEARING DATE: SEPTEMBER 19, 1994

DECISION/RELEASE DATE:

SEPTEMBER 19, 1994

DECISION AND REASONS FOR DECISION

This matter came on before the Discipline Committee of the College of Physicians and Surgeons of Ontario at Toronto on September 19, 1994.

At the outset of the hearing, one of the panel members of the Discipline Committee stood down because of a possible apprehension of bias.

In the Notice of Hearing it was alleged that Dr. John Caverhill was guilty of professional misconduct in that:

1. It was alleged that Dr. John Caverhill was guilty of professional misconduct in that:
 - a) he engaged in sexual impropriety with a patient contrary to Ontario Regulation 548, section 29(30) as amended;
 - b) he engaged in conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 548, Section 29(33) as amended; and,
 - c) he failed to maintain the standard of practice of the profession contrary to Ontario Regulation 548, section 29(22) as amended.
2. It was further alleged that Dr. John Caverhill is guilty of incompetence in that:
 - a) he displayed in his professional care of a patient a lack of knowledge, skill or judgement or disregard for the welfare of the patient of a nature or to an extent that demonstrates that he is unfit to continue in practice contrary to Section 61(4) of the **Health Disciplines Act** R.S.O. 1990, c. H.4, as amended.

The Notice of Hearing contained particulars of two complainants. At the outset of the hearing, counsel for the prosecution advised the Committee that the College was not proceeding with the second complainant and that it would not be calling evidence in connection therewith. The Committee therefore restricts its consideration to the particulars of the first complainant, which are as follows:

(ZSP)

- (a) ZSP became Dr. Caverhill's patient in May, 1989;
- (b) ZSP consulted Dr. Caverhill for problems of low self-esteem and difficulties with her intimate relationships with men;
- (c) Dr. Caverhill began seeing ZSP on a weekly basis which continued from May, 1989 until March, 1991;
- (d) shortly after ZSP became Dr. Caverhill's patient, he began to move physically closer to her during therapy sessions and he began to touch her inappropriately including:
 - i) holding her hands and head;
 - ii) stroking her hair and face;
 - iii) hugging her;
 - iv) kissing her on the mouth, face and neck;
 - v) touching her genital area and buttocks, both over and under her clothing;
 - vi) rubbing his genitals up against ZSP.
- (e) During therapy sessions, Dr. Caverhill also asked inappropriate questions or made inappropriate comments to ZSP, including:
 - i) Dr. Caverhill asked whether she wanted to make love to her father;
 - ii) Dr. Caverhill asked whether she had sexual fantasies about himself and whether she was sexually attracted to him;

- iii) Dr. Caverhill discussed whether she masturbated and he insisted that she masturbate at home while thinking about him;
 - iv) Dr. Caverhill advised ZSP that he masturbated and thought about her;
 - v) Dr. Caverhill advised her that she needed to make love to him;
 - vi) Dr. Caverhill asked her whether she wanted to make love to him.
- (f) During therapy sessions, Dr. Caverhill disclosed personal information including:
- i) Dr. Caverhill had been sexually abused by an aunt;
 - ii) Dr. Caverhill had a vasectomy.
- (g) At one therapy session in or about July or August 1990, Dr. Caverhill had intercourse with ZSP. Afterwards, he offered to kiss her genitals but she refused.
- (h) Thereafter during therapy sessions, Dr. Caverhill suggested to ZSP that she pretend that his penis was her mother's breast. He invited her to suck on his penis as if she was breastfeeding, which she did on several occasions. This resulted in Dr. Caverhill ejaculating on a number of occasions.
- (i) During following sessions, Dr. Caverhill asked ZSP if she would make love to him again, that he wished to please her sexually by giving her oral sex which she refused.
- (j) Dr. Caverhill advised ZSP not to say anything to anybody about what happened during the sessions as he could lose his job if she did.
- (k) Dr. Caverhill sent ZSP a card and presents on her birthday.
- (l) When ZSP wanted to terminate therapy, Dr. Caverhill became angry and tried to persuade her to continue.

Dr. Caverhill pleaded guilty to professional misconduct in that he had engaged in sexual impropriety with a patient [paragraph 1(a)], and to the allegation of incompetence,

paragraph (2). Counsel for the prosecution withdrew allegations in paragraph 1(b) and 1(c) of the Notice of Hearing.

An Agreed Statement of Facts regarding the first complainant, ZSP, was presented. Dr. Caverhill denied most of the allegations contained in 1(e) of the particulars. There is dispute regarding whether ZSP stated a desire to indulge in oral sex. He denied particulars (h) and (i). Dr. Caverhill did admit to committing acts of professional misconduct by engaging in sexual impropriety with a patient and incompetence in respect of the conduct described in paragraphs (d), (f), (g), (j) and (k). After receiving notification of the complaint of ZSP, Dr. Caverhill prepared and signed a statement dated September 27, 1991, to the College wherein he acknowledged his inappropriate conduct. At the same time he resigned from the College effective that date and he has not practised since.

The Discipline Committee considered the evidence presented and accepted the plea of guilty to the allegations of professional misconduct for sexual impropriety and incompetence and made a finding of guilt.

PENALTY

A joint submission as to penalty was filed which recommended the following as appropriate:

- 1) The Discipline Committee acknowledges Dr. Caverhill's handwritten resignation dated September 27, 1991 and his formal resignation of membership dated September 19, 1994.
- 2) The Discipline Committee acknowledges Dr. Caverhill's undertaking to the College to not apply to this College or any other licensing body for a licence to practise medicine at any time or under any circumstances.
- 3) Dr. Caverhill is to be reprimanded and the fact of the reprimand is to be recorded on the Register and directed to be included in the public portion of the Register by the Discipline Committee pursuant to Section 23(3), paragraph 3.i. of the **Health**

Professions Procedural Code of the **Regulated Health Professions Act, 1991** as amended, and,

- 4) Pursuant to Section 51(2), paragraph 5.1 of the **Health Professions Procedural Code**, the Discipline Committee orders that on or before September 30, 1994, Dr. Caverhill provide the College with an irrevocable letter of credit in the amount of \$10,000.00 which shall be in place for a period of five years from September 19, 1994 on terms acceptable to the Registrar of the College as security for therapy and counselling provided by the College pursuant to Section 85.7 of the **Code** for ZSP.

Counsel for the prosecution informed the Discipline Committee that, when Dr. Caverhill knew of the complaint, he went to the College almost immediately and voluntarily made his statement and resigned his membership. Both complainants have agreed with the proposed disposition. Both complainants were spared the ordeal of testifying. Counsel urged the Committee to accept the resignation and undertaking in lieu of ordering a revocation.

A Victim Impact Statement was presented in which the complainant described profound mental, emotional and physical symptoms, an inability to function and the necessity to drop out of University. Thanks to a therapist, she has recovered to a large extent but some effects persist. The Committee was reminded of the principles of penalty setting which, in the Committee's view, are all satisfied by the proposed penalty.

Counsel for the defence supported the joint submission. Dr. Caverhill has acknowledged his huge mistake and his appalling lack of judgement. To his credit, he immediately acknowledged his guilt and the Agreed Statement of Facts avoided the necessity of the complainant having to testify. It also spared the College the considerable expense of a hearing.

The Committee considered the implications of a resignation and the undertaking not ever to reapply for a licence as well as the letter of credit as opposed to a revocation. While a revocation would have been imposed and therefore a stronger condemnation of his activity, the penalty proposed, despite the implication of voluntariness, accomplishes the same result. The public is protected. The doctor, the profession and the public will be fully informed of the attitude of the College towards such egregious behaviour. The complainants were spared the need to testify. In addition, since this offence occurred when the **Health Disciplines Act** was law, a revocation would allow re-application for reinstatement in a year. By making this undertaking, Dr. Caverhill has foreclosed the possibility of reinstatement.

Therefore, the Committee agreed with the proposed joint penalty submissions as set out above and made an order to that effect.

Dr. Caverhill waived his right to appeal and the reprimand was administered.