NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Richard Fredrick Gorman this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant, which includes a ban on publication of a description of the complainant, the complainant's place of the employment or other information that might identify the complainant under subsection 47(1) 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:

Every person who contravenes an order made under section 45 or 47 is guilty of an offence and on conviction is liable to a fine of not more than $10,000 for a first offence and not more than $20,000 for a subsequent offence.

Indexed as: Gorman (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 26(2) 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. RICHARD FREDRICK GORMAN

PANEL MEMBERS:	**DR. M. GABEL (CHAIR)** **E. COLLINS** **DR. J. SCHILLINGER** **DR. J. DOHERTY** **J. DHAWAN**
Hearing Dates:	July 5-7, 2006 September 6-8, 2006 October 11 & 12, 2006 December 18, 2006
Decision Date:	March 27, 2007
Release of Written Reasons Date:	March 27, 2007

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons (the "Committee") heard this matter at Toronto on July 5 to 7, September 6 to 8, October 11, 12 and December 18, 2006**.** At the conclusion of the hearing, the Committee reserved its decision on finding.

PUBLICATION BAN

On July 5, 2006, College counsel made a request on behalf of the complainant for a section 47 order. The Committee granted the order that no person shall publish the identity of the complainant, which includes a ban on publication of a description of the complainant, the complainant's place of the employment or other information that might identify the complainant under subsection 47(1) 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.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Gorman 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 conduct or an act or 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;

(2) under clause 51(1)(b.1) of the Code, in that he engaged in sexual abuse of a patient.

The Notice of Hearing set out in Schedule "A" the following particulars in support of the allegations:

1. Sexual abuse and disgraceful, dishonorable or unprofessional conduct

1. Dr. Gorman, a psychiatrist, and Patient A, whose identity has been disclosed under separate cover, were involved in a physician/patient relationship from approximately 2002 to early 2003. The physician/patient relationship was psychotherapeutic (the "Relationship ").

2. During the course of the Relationship, between approximately August 2002 and February, 2003, Dr. Gorman sexually abused Patient A by engaging in acts and behavior including:

i. lying next to each other,
ii. caressing,
iii. embracing,
iv. straddling her,
v. kissing, including kissing on the lips,
vi. fondling her breasts,
vii. placing her breast in his mouth,
viii. telephoning her from a hotel room and inviting her to come join him;
ix. inviting her to "get together" with him, while his wife was away,
x. asking her to let him perform oral sex on her, and
xi. engaging in a simulated act of sexual intercourse.

3. In an e-mail dated "5/9/2002", Dr. Gorman sent Patient A an "essay" containing sexual innuendo.

4. The aforementioned acts and behavior also constitute conduct or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional.

2. Disgraceful, dishonorable or unprofessional conduct

5. During and after the course of the Relationship, Dr. Gorman sent numerous pieces of correspondence of a personal nature to Patient A.

6. During and after the course of the Relationship, Dr. Gorman made numerous personal telephone calls to Patient A on both her cellular and home telephones.

RESPONSE TO THE ALLEGATIONS

Dr. Gorman admits to the following facts set out in Schedule A of the Notice of Hearing as detailed in Exhibit 2A. These are paragraphs 1, 4, 5, 6 and, of paragraph 2, sections i, ii, iii, v, vi, and xi. He acknowledges that these constitute professional misconduct and sexual abuse of a patient as alleged in the Notice of Hearing.

Because of wording and/or contextual dispute, Dr. Gorman acknowledges some of the conduct but does not accept all of the facts of paragraphs 3 and paragraph 2, sections vii and x.

Dr. Gorman denies the conduct outlined in paragraph 2, sections iv, viii and ix.

FACTS AND EVIDENCE

The College introduced written evidence, which included a record of e-mails and voice messages (Exhibit 4) and a memorandum from the College investigator, Ms. B, dated June 13, 2005 (Exhibit 10). In addition , there was a Joint Book of Documents (Exhibit 3) comprising the patient chart of Patient A and its transcription, OHIP records pertaining to Patient A, e-mails and a birthday card and transcript of voice messages. An e-mail from Dr. Gorman to Mr. C was entered as Exhibit 13.

Defence counsel introduced a letter from a Dr. Z (Exhibit 11) and a compendium of testimonial letters (Exhibit 12).

The College adduced testimony from the complainant, Patient A, and the defence from Dr. Gorman. In addition, the defence produced four expert witnesses; Dr. Y, Dr. X, Mr. C, and Dr. W.

Counsel for the parties were in agreement that the finding and the penalty phase of the hearing would proceed in tandem. The Committee was therefore aware that the evidence

was to be utilized first in making its findings and, if professional misconduct was found, in determining the appropriate penalty.

OVERVIEW of FACTS

The testimony of Patient A and Dr. Gorman was in accord and consistent with respect to the following facts:

Dr. Gorman, presently age 62, is a psychiatrist having obtained his fellowship in March 1975 and a diploma in psychoanalysis in 1982. He practices mixed adult psychiatry with approximately one quarter of his practice devoted to psychoanalysis. The complainant is a single female born in 1972. She first saw Dr. Gorman in late 2000 and, after preliminary assessment, began psychoanalysis with him in mid 2001. Their sessions were always in his office. During the first year, Patient A often tested boundaries such as asking for “hugs” which he would refuse. Despite his initial consternation, the ensuing psychoanalytical sessions were often conducted with Patient A lying on her stomach rather than her back. Patient A, on more than one occasion during that period, stated that she wanted boundaries observed (as did Dr. Gorman) and she went “online” to research boundary violations by therapists. During that period, they describe the “dynamic” between Patient A and Dr. Gorman as often light with some preliminary “kibitzing”.

During the first year, Patient A used e-mail to communicate some material for therapeutic discussion, which Dr. Gorman actively discouraged. Beginning in December of 2002, personal e-mail exchanges occurred using an address, which Dr Gorman suggested, as it was private and available only to him.

In early August, 2002, there was an incident during a session at which Dr. Gorman allowed the patient, at her request, to hold his hand.

In late August, 2002, while viewing a photo album, which she had brought in for Dr. Gorman to see, Patient A and Dr. Gorman sat side-by-side. Dr. Gorman then kissed

Patient A, first on the temple and, then, on the lips. Caressing, hugging and kissing subsequently ensued in that and subsequent sessions over the next two months.

In early September, 2002, Dr. Gorman gave Patient A a copy of a sample of his writing, which he stated had been published in a “medical type” journal. This was following her having given him samples of her own creative writing and was compatible with her request to obtain information as to his tastes.

It is noteworthy that one of Dr. Gorman’s adult children, a daughter, had, as a child, suffered severely from hemiplegic migraines. Although asymptomatic for several years, some symptoms returned in the summer of 2002. In late September, 2002, she was killed, having lost control of the car she was driving apparently because of a sudden hemiplegic migraine attack. The College accepts as fact the daughter’s condition and subsequent death. After Dr. Gorman’s return to the office after his daughter’s funeral, the intimate contact with Patient A did not recur for about one week.

In the first or second week of October 2002, there was an incident of simulated sexual intercourse when the patient pulled Dr. Gorman onto her. Both were fully clothed and they ground their pelvises together for a period of time. There was a question as to whether Dr. Gorman had ejaculated at that time.

There was another incident when, during a period of caressing, he placed his hand on her back under her clothing and undid her brassiere. He kissed and caressed her nipple by mutual consent and, while she was on top of him while still clothed (except for her top being raised), her exposed breast came to be in his mouth in the act of his sitting up.

On a weekend in October, 2002, Patient A was to run in a half marathon. Patient A had asked Dr. Gorman to come and watch her, in place of her father who could not attend. Dr. Gorman's wife was away that weekend. Dr. Gorman, who had had other planned activities, cancelled and phoned Patient A. He said to her that he was in a hotel room

eating chocolate and strawberries, which Patient A interpreted as an invitation to join him.

During the period of time in which they were having sexual contact, no actual sexual intercourse or mutual masturbation occurred. There were sexual comments exchanged between them including talk about oral sex, although they never engaged in it. They never removed clothing other than as noted above, as well as one occasion where Dr. Gorman's shirt was opened. They did discuss the mechanics of having an affair, but did not carry through with one. They often tried to restore boundaries during their sessions.

After the end of October 2002, they had no further sexual contact and they mutually decided to continue therapy, discussing what had happened between them. Although Dr. Gorman seemingly took responsibility, he told her that she also had some role to play. They also discussed her seeing a female therapist. Before parting, they agreed to maintain contact with each other.

Between December 2002 and the end of January 2003, each originated a number of e-mail and voice mail contacts between them. Before this, Patient A had seen two other psychotherapists who were not satisfactory to her. In an e-mail in January 2003, Patient A indicated this and asked what she should do.

Therapy with Dr. Gorman resumed in late January, 2003 until late April, 2003. During this period, no boundary violations occurred and most of the time was spent discussing their past relationship. They had double sessions throughout this period, because of logistical problems with the appointments of his other patients. When the double sessions proved a burden to him, Dr. Gorman cancelled them causing some distress to Patient A and she decided to end the therapy. At the last session, they agreed that they would contact one another, if something "big" happened in their lives.

From May 2003 to January 2005, Dr. Gorman sent several unsolicited and unanswered e-mails, voice mails, and cards to Patient A. In February 2004, Dr. Gorman sent a long,

self-serving letter to Patient A and, following an e-mail to her in January 2005, a formal complaint was made by Patient A to the College.

ADDITIONAL EVIDENCE

The following evidence was also heard by the Committee. The evidence set out below with respect to Patient A and Dr. Gorman relates to areas where their testimony diverges or should be considered on its own.

Testimony of Patient A

In the initial stages of therapy, Patient A testified that she found Dr. Gorman quite engaging, but admitted to hesitation in starting therapy with him because she had a tendency to “crushes” on older men and she told him so. She also told him that her first sexual experience was with a man, aged 27, when she was 15.

In the first year of therapy, Patient A testified that she was often playful, but felt that the playfulness was back-and-forth and still within acceptable limits, although, at times, she felt that Dr. Gorman was flirting with her. Initially, she developed a “crush” on him and was hoping that he liked her in return. As the therapy progressed, she felt a strong infatuation for him and said that they would periodically discuss this issue. Dr. Gorman occasionally disclosed things about his personal life at her prodding, and she admitted that his responses were usually limited.

Patient A testified that the first physical contact occurred in August 2002 after she asked him, “Will I ever get to touch you?” and he put out his arm. She did not immediately put her arm out for contact and he withdrew his arm. When she asked why he withdrew it, he reached out again, and she touched his arm for about thirty seconds. She further described that he held her hand and, after about thirty seconds, began to stroke her hand with his palm. She was so "melted" by this, that when he tried to pull his hand gently away, she wouldn't let him, but held on for another moment until they mutually broke off contact. She stated that he said that this was over the boundary and pulled his hand away.

Although initially elated, later on reflection, she felt embarrassed not wishing anything to happen with him.

At the following session, they discussed this incident and Patient A testified that she told him that she wanted him to set limits. When she told him that she thought it was sensual, he seemed surprised, but she felt that he thought that he had done something wrong.

Two weeks later, Patient A brought in a photo album and asked Dr. Gorman to sit beside her to look at it. Initially, he would not sit beside her, but held the album on his legs and she knelt beside him. When suggesting that they sit together, she told him, “Don’t worry, I won’t bite you” and she felt that this made it more likely that he would sit beside her. He then said that this was ridiculous (referring to the positions they were in) and they sat on the couch beside each other with one limb of the album resting on each of their legs. Patient A testified that he made some sexual comments at some of the photographs. They lingered on the last page, and she put her hand on his shoulder and said that he couldn't even look at her playfully. She leaned her head against his shoulder, he turned and kissed her forehead, her cheek and then her lips. What followed next she remembers only in fragments. They were embracing and caressing and she felt that he was acting like an **“**adolescent boy**”**. He said things like "sweet, sweet pussy" and, also, that she would be "so easy to love" and that he couldn't believe that this was happening. Dr. Gorman also said that he had a good marriage and that he was going to lose his "best patient". He asked if he could "go down on her". She understood this to mean oral sex, but said that she did not want to go any further. She then left the session, but was scheduled to come back at the end of the same day for a further session.

Patient A testified that, at that following session, they initially did not sit together, but at the ends of the couch. He stated that this had never happened before, but she then asked for hugs, he said yes and they caressed. She said it was then that Dr. Gorman asked “to go down on her” (admitting that she is unclear as to which session on that day he said this). There was some kissing on the lips at the latter session. Patient A further testified that Dr. Gorman then asked her to lie on the couch. She did so on her stomach, and he

went over to sit on the chair. In doing this, however, the small of her back was exposed. Dr. Gorman then came over and kissed her on the small of her back. She remembers that, at that session, they discussed the doctor/patient relationship and that he was worried that he would lose his best patient. She was worried that he would drop her as a patient and she would no longer be able to enjoy going there. Although he did say he was thinking of ending the therapy, he told her that they could stay in therapy, and that she could go back to him for several years, until she had children.

Patient A also described one incident, following the death Dr. Gorman's daughter, wherein she sat on the couch and nodded to him and he walked over and straddled her with his shirt open. She did not further elucidate on this incident.

In describing the “breast incident” at a later therapy session, Patient A testified that she asked Dr. Gorman to put his hand on her back under her jersey but then he reached up to undo her bra and he fondled her breast. She did not quite remember how she came to be on top of him with her breast exposed, but does remember that he had taken off his glasses and put her breast in his mouth and kissed her breast. During cross-examination, she indicated that the breast came into his mouth as he sat up from lying on his back with her on top.

During the incident involving the “pelvic grinding” during a later therapy session, Patient A said that Dr. Gorman suddenly sat up seemingly amused with himself and said "I came", and that this hadn’t happened in twenty years. She felt that she must have had a strange look on her face at this because he then said, "you hate me, don't you". When he unbuttoned his pants to look at his underwear, she looked away because it did not feel right. She did not actually see if he had ejaculated and it was emphasized on cross-examination that she did not actually see semen, or ever observe him with an erection. In Dr. Gorman’s testimony, described below, this incident was attributed to a “prostate problem”. She did not remember him ever mentioning a prostate problem, nor noticed him having to leave the office to void during office hours.

Although feeling "used" on leaving this session, Patient A returned for the next session and remembered Dr. Gorman saying that he could never have sex with anyone except his wife. This distressed her because it indicated that he could stop himself for his own benefit, but not because it hurt her. On cross-examination, Patient A agreed that they never removed their clothing or had oral sex, although they discussed it. She also agreed that there was no sexual intercourse or mutual masturbation.

Patient A remembered that, with regard to the incident occasioned by her running the half marathon, she had asked Dr. Gorman to come to see her run as her father could not. She then thought better of it and asked him not to come. She was aware that Dr. Gorman had previously told her that his wife was going out of town, and that she asked him not to tell her that because it was too tempting. She also testified that Dr. Gorman phoned her just before the half marathon**,** stating he was in a hotel and had strawberries and chocolate**,** but she agreed on cross-examination that she did not know if he was calling from a hotel, and that he could have been calling from anywhere. She admitted that the reference to the hotel and food items could have been made jokingly, although she took it at that time to be an invitation, because she knew that his wife was out of town.

Patient A testified that the cessation of therapy in December 2002 was her decision, although he agreed and expressed professional disappointment in himself. Although she had missed him, she can remember feeling anger and betrayal and felt that he was trying to manipulate her with regards to the role that she played. She felt that, although Dr. Gorman had hurt her, he was the only person from whom she wanted help.

Patient A also testified that, during the period of time from when therapy resumed in late January, 2003 until it ended in April 2003, they discussed her anxiety, but did not work through what happened because he would become defensive, and she thought he was trying to manipulate her. He never acknowledged the sexual abuse, and often asked if she loved him. She was upset when Dr. Gorman, in April 2003, left a voicemail saying that he was unable to continue the double sessions, because they were cutting into his time with other patients. She felt that he owed her because of the past and that he should

not stop just because he thought she was better. She had apparently begun therapy, however, with a female psychotherapist and was in a state of transition. The last appointment in late April, 2003 was relaxed but sad because of the ending and they agreed to contact each other if anything major happened to either of them.

Patient A testified that she did not contact Dr. Gorman from April 2003 to December 2003 and she felt troubled and anxious about the contacts that Dr. Gorman tried to make with her. Although softened by a birthday card and a phone call that Dr. Gorman made to her in January 2004, she told him that he had sexually abused her. She stated that Dr. Gorman accepted it as abuse and did not romanticize it. A letter sent in February 2004 following this phone call was a long reflection by Dr. Gorman on what had happened between them and asked her to take some responsibility for it. She said that, on reading the letter, it made her feel that it had been her fault, and that she wished that nothing had happened between them. Patient A was very surprised to get the last e-mail wishing her happy birthday in January 2005. She filed a formal complaint with the College the following day.

Testimony of Dr. Gorman

Before proceeding with his defence, Dr. Gorman offered a statement to the panel and to Patient A. In it, he stated that he has suffered over the past four years because of his mismanagement of Patient A's treatment and feels that he failed her. He told the Committee that it began well and was well-intentioned, but then he lost his way and is now appalled by his behavior. He does not blame Patient A as she had a right to be herself. He broke the first rule of medicine; that is to do no harm. He broke the first rule of psychoanalysis; that is not to act on anything but to provide a free and safe space for the patient. He has since sought professional help and this has helped him to understand where he went wrong. He feels it has been a problem of counter transference, which was his duty to understand, and his personal blind spots, which led him down the wrong pathway. He freely admitted that he should have recognized the issues, stopped treatment, told the patient and sought help. He was moved by the testimony of Patient A and by her suffering. He stated that the ordeal that he has gone through along with his

family is not important compared to what she has gone through. He felt that he has learned much about what she has suffered through the process of this hearing and his own psychotherapy.

Dr. Gorman's testimony described his initial assessment of Patient A as showing a mixed anxiety and depression (Axis I) with a narcissistic personality disorder (Axis II). In May 2001**,** he thought that because she was young, intelligent, quite verbal and reflective, they should move to psychoanalysis.

Dr. Gorman testified that he found her robust, engaging, at times flirtatious and coquettish and she reminded him of his daughter. Early on, Patient A expressed some concerns over boundaries, and the consequences that therapist misbehavior might have. When he clearly stated that such misbehavior would hurt her and he would have to stop therapy, she was relieved and became relaxed.

Dr. Gorman testified that, by December 2000, he noted that she had developed an **"**idealized erotic transference", which was important to therapy and that he was dealing properly with it as analysts are trained to do. Some six weeks prior to August 2002, he noted that something else was happening, although he was unclear as to what it was.

He was also aware of his counter transference and felt that this was of a father/daughter nature, and that he needed to be firm but allow her to express herself. He gave in to her persistence in pushing boundaries such as lying on her stomach for sessions so as not to "bug her ". He later explained that "tough" was not the right approach with her**,** which accounted for the "kibitzing" that was necessary to establish rapport. He testified that, unfortunately, she pushed beyond his **"**capacity to say no**"**.

Dr. Gorman testified that he was aware of her aggressive sexuality and her use of it in situations, in which she is vulnerable, to obtain control, and of her need to dominate men. The reenactment of this pattern with him was found in this therapy and was to be used in her treatment. He was also aware that Patient A showed some **"**resistance**"** to therapy,

which jeopardized the therapeutic alliance, wherein the therapist and patient work together.

Dr. Gorman was also aware of a narcissistic personality's need to put an idealized person down. Often, when the idealized person does not measure up to expectations, this results in a narcissistic storm. He was of the opinion that narcissists often drop their therapist because of this reaction.

Dr. Gorman admitted that Patient A was a challenging patient and that he had not worked with many narcissistic personalities before. He had never had a patient with such erotic transference before, and that her sexuality was too much for him, although he was not fully aware of it at that time. He admitted that he was not as aware of this aspect as he should have been. In retrospect, he admitted that he should have done more reading about this aspect and gone to a colleague.

During the first twenty months of therapy, Dr. Gorman testified that he felt that Patient A was making progress in her relationships and in her self-esteem. He looked forward to her sessions with him. He realized now that, in addition to her importance professionally to him, she was becoming important to him for personal reasons.

Dr. Gorman testified that, at the beginning of the summer of 2002, he felt that something was happening. There was a lightening of the mood between them and an increase in her flirtatiousness. They spent more time in bantering before getting to serious portions of the sessions. He did not however sense trouble at that time, but was waiting for "something" to occur.

Dr. Gorman further testified that he responded to her request to touch him (in early August, 2002) because he felt that it might allow her to develop more fantasies and express herself more openly. Although he described it as hurting him, he did not pull away his arm for at least fifteen seconds because he wanted to acknowledge her feelings and not reject her. The chart records, "Brief touch." and, "…seems more than I bargained

for and maybe over boundaries". He did not record two previous requests for touching but felt this was different and he should respond.

Dr. Gorman described the session involving the photo album as also beginning like any other session. The week before Patient A had shown him pictures for a photo album she was preparing as a gift for her mother. Patient A and her mother were progressing in their relationship. He was seated in a chair, they talked as usual and, twenty-five minutes into the session, she handed the slippery, plastic covered album to him, which he put on his knees. Although with other patients he has viewed albums situated between them on the sofa, Dr. Gorman testified that he declined her suggestion that they sit on the sofa. He sat in the chair with the album on his knees, and she crouched beside him, leaning over the armrest. As she was tending to lose balance, he suggested going over to the couch with the album and they sat beside each other with one limb of the album resting on each of their legs. Later, the album was lifted over to his lap, and she moved closer to him with their thighs touching. She said, "Don't worry, I won't bite". He stated that he was too numb to do anything. She then put her head on his shoulder and slumped beside him murmuring something like "Oh, Dr. Gorman".

Dr. Gorman testified that, at that time, he felt a paternal affection referring back to story times with his daughter when she was a child. After about thirty seconds, he turned and kissed Patient A's temple. She then looked at him with her mouth open, and they had a sensual kiss. The kissing and embracing went on for about five minutes during which time there was some erotic talk between them. He denied asking her ever if she wanted him to "go down on her" but said this term was used in discussing mutual fantasies on other occasions. They then broke apart (mutually), and he **"**came to his senses". Dr. Gorman testified that he put his head in his hands and said that he'd ruined the analysis, that it was not right for her and that it would hurt her. She then asked "do you want me to leave?" He answered, "No", they had to understand what was happening. He testified that Patient A told him that she did not want to leave. He told her that they could not continue in analysis anymore, but that they could work in supportive psychotherapy to keep this within boundaries.

Dr. Gorman testified that Patient A came back for another session after his last patient that day, but when she came back they began kissing again. They then broke apart and he said, “What have I done? I just wanted you to come back and discuss this”. Dr. Gorman then told her that they could not continue like this but that they had to observe boundaries, and she agreed.

Dr. Gorman testified that the ensuing sessions would begin properly, and then “degenerate”. Patient A would look at him, tap the sofa and he would go and sit beside her and then lose control. There was kissing, caressing and soft talk, usually at the end of the sessions, but because some issues would be discussed beforehand, he had billed OHIP for those sessions. They would also speculate on the mechanics of an affair and where they might conduct one. Her house was ruled out because she shared it with a roommate and they both felt they were too old for "rug rash" in his office. They agreed that going to a hotel would be sleazy, although he did mention once that perhaps a nice hotel with "chocolate and strawberries” would be acceptable.

They never got beyond "what if". Dr. Gorman went on vacation for two weeks in September and reflected over the vacation on the situation and decided that this must stop. However, when he came back from vacation, they fell back into the same pattern.

Dr. Gorman testified about the family situation as it related to his daughter, who was approximately the same age as Patient A. She had the return of symptoms of hemiplegic migraine, in 2002, raising the question as to whether she should be allowed to drive. Because of her persistence and pattern of relationship to her, he gave in to her, against his wife’s opinion, and allowed her to drive. This raised guilt when she died tragically in an automobile accident on September 24, 2002. Although he sat Shiva (the Jewish mourning period), he returned to work early before the prescribed seven days, feeling somber but, he felt, functioning well. This was related by Dr. Gorman in the context of further explaining his behaviour with Patient A.

Dr. Gorman testified that the incident involving Patient A's breast occurred while he was in this somber state. He testified that they were sitting side-by-side, and she put her head on his chest and said she wanted him to touch her back. He did this through her clothing, but she asked him to put his hand on her skin. He did so, they began to kiss, and he reached up to undo her brassiere. She said, "No". He was surprised at this recalling that in his youth such a request was a signal that the woman wanted her brassiere undone. He apologized saying that he thought that was what she wanted. About fifteen seconds later, she said, "Yes", and that she loved it when her boyfriends and her lovers kissed her nipples. He testified that he was sitting on her left side, and that she was wearing a jersey. He stated that at no time was either her brassiere or jersey removed and that she lifted up her bra and jersey, exposing her breasts. They progressed from the sitting position to where he was lying on top and then she was lying on top. He absolutely denied that he was straddling her. He stated that he kissed her breast while they were seated and later, while she was on top, her exposed breast literally fell into his mouth. On cross-examination, when it was suggested to him that he said that she placed her breast in his mouth, he explained that he merely wished to indicate that the act was consensual. He emphasized that this occurred in a whirl wind of excitement and passion.

Dr. Gorman testified that, to his recollection, the incident involving the pelvic grinding occurred in late October, 2002. He was in a somber mood, having spent the Thanksgiving Day weekend clearing his deceased daughter's apartment. He remembered that Patient A suddenly turned to him, grabbed his collar and shirt and pulled him down on her. While lying on her, he was uncomfortable because the edge of her pelvis ground into his groin. He therefore shifted position, and then "got into it" and found it erotic. There was no effort to remove clothing and, after one and a half minutes of this grinding, he said that he felt wet and said out loud "have I come?" He pushed himself off of her and felt quite embarrassed. He denied feeling any sensation of ejaculation, and realized that he had voided and not ejaculated. He testified that he had a prostate problem with urinary frequency and hesitation. He did not tell her that it was urine, as he was very embarrassed. He asked her, however, to look at him asking "am I wet?" She looked away. He says that his shirttail was out, and thus he un-zippered his pants to tuck the

shirttail in. However, she was annoyed with him and said, “fine for you to have your pleasure" and she left. He felt that she was mad at him because she wanted to lie beside him at that time and not have him get up and leave. On cross-examination, while denying that he had an erection for this incident, he stated that he felt this was "symbolic intercourse”.

Dr. Gorman testified that he recalled the incident regarding the patient running a half marathon in October 2002. He stated that this followed the clearing of his deceased daughter's apartment on the Thanksgiving Day weekend. There was considerable tension and his wife needed a break. At a friend's invitation, she went to Montréal and, knowing that he was free that weekend, a friend asked him out to dinner. He had wanted to escape with his racing shell (rowing) to a northern lake. He knew that Patient A was running in a marathon and that she had asked her father down to view this but that he could not attend. Patient A had asked Dr. Gorman to go instead, but he could not as he was going north to row. However, the weekend got rained out, and his friend could not accompany him to dinner. He, therefore, called Patient A.

Dr. Gorman denied calling Patient A from a hotel, but admits that he may have jokingly commented about a hotel and chocolate and strawberries. He asked if she still wished him to see her run and she said no, it was not important. He denied that he invited her to get together with him while his wife was away, although he admitted that he had previously told the patient that his wife was going out of town, and that Patient A had said not to tell her that because it was too tempting. He also denied ever asking her to his cottage explaining that he did not own one during this time period. He denied ever asking her to go kayaking with him, although he did call her from his kayaking trip in B.C. in September 2002 because he knew she was interested.

Dr. Gorman also denied that he ever straddled her. He testified that the closest he ever came to straddling her was, on one occasion, when he came across to her while she was sitting on the couch, and their knees touched. He recalled that the word “straddle” had a deep meaning for her. In one therapy session, she recalled in her childhood, after seeing

her straddle a favorite uncle, her mother warning her that a girl should never do this. She had also described an early sexual experience with a boyfriend, that involved straddling and she had also written a violent story about a girl straddling a man and "blowing his brains out". He once reminded her, while she was straddling him, of what her mother had said and she answered "but who listens to mother".

Dr. Gorman testified that after the appointment in late October, 2002 until December 2002, he conducted supportive psychotherapy with an analytic mode with her. He felt guilty that perhaps he had missed something such as child molestation. In retrospect, he realized that he was not the person to correct his error and that he should have referred her to someone else. They did discuss his referring her to a female therapist, and she was receptive to this idea.

Dr. Gorman testified that, subsequently in the winter, without his knowledge**,** Patient A saw two other therapists. She did ask him if he was afraid that another therapist would report him and he testified that he told her yes, but that she must do what is best for her. He thought about a "lay therapist", who would not have mandatory reporting requirements**,** but could not think of one who was appropriate. He agreed that he did not go voluntarily to the College, and that he did not want to face severe penalties, nor have his wife and family find out. He denied that he continued the sessions with her to prevent her from reporting to the College. He was not aware that she had seen another therapist until the e-mail of early January, 2003.

Because she was still hurting and the therapists she had seen were unacceptable to her, and because he thought that he had to make it up to her, Dr. Gorman invited her back to talk at the end of January 2003 and they recommenced therapy after the second visit. They were able to make some progress, and she felt better being in treatment with him even though she was rightly angry because he had betrayed her. He explained that she needed to recognize her part in this in order to make progress and thus he spent time offering a defence (as opposed, in his mind**,** to being defensive) even though he took full responsibility for the boundary violations.

In April 2003, Dr. Gorman cut back on her double sessions for logistical reasons and because he felt that she was doing well. Patient A reacted to this with what was perhaps a narcissistic storm, and he realized that she had not progressed and that he could not do much more for her. The last session was mild and sentimental, and he stated that she said that she forgave him. They left their cell phone numbers with each other on the understanding that they were to call for "anything big". She was quite tearful and used Kleenex, which she did not put in the wastebasket when she left. He was put off by this, but not wishing to end on a sour note, called her two days later, left a message, which he testified was joking about it, saying he had not thrown it out and she would have to come to do so. At that time, he recalled her saying that he could call when things settled down.

Although she did not contact him again, he admitted calling her numerous times thereafter, because of a genuine affection he had for her and because he felt badly about how he had managed the therapy and the damage he had done. He had a problem with her "being out there" and not calling when he knew she could, whereas his deceased daughter was “out there” and could not call. He now realizes that his attempts to contact her were making it difficult for her.

Dr. Gorman testified that, since mid July, 2005, Dr. Y, a training psychoanalyst in Toronto, supervises his practice with regard to female patients. There are also mandated safeguards in his office (video recording, postings, and the requirements that his female patients be aware of the allegations). In thirty years of practice, he never had a problem with boundary violations. He has become aware that he is vulnerable because of his need to be idealized and for patients to validate him. Aside from the professional challenge to him, he connected this patient with his relationship with his daughter. Further, the patient’s need to idealize went well with his need to be idealized. He also sees Dr. X, a training psychoanalyst, for therapy both alone and with his wife. He has also attended the boundary violation course provided by the University of Western Ontario.

On cross-examination, Dr. Gorman agreed that he did not seek professional help for himself from a psychiatrist until after the complaint was laid, in part because he knew that they would have to report him to the College.

When asked why he would review her writing when he was not a literary critic, Dr. Gorman testified that it was important for him to look at her writing much as one would look at a child's writing, noting that narcissists look for praise from someone they admire. He said that he tried to look for positive things in her writing and encouraged her to find a real critic. When asked if reading her writing created danger of fostering transference, he responded that transference is a necessary part of the therapy and any spillover to erotic transference was a necessary evil. He stated it is important to recognize the transference, step back and analyze it. In addition, it was necessary to discuss sex with the patient in order to have it out in the open in order to deal with the sexual tension between the patient and analyst.

College counsel asked Dr. Gorman about his testimony in chief and his responsibility for the boundary violations with particular reference to his taking responsibility but then adding that she was responsible in a "small r" sense. He agreed that Patient A had the right to be herself. When referred to his letter to Patient A dated in mid January, 2003, where he referred to her breaking of the basic rules and boundaries, Dr. Gorman explained that he was not blaming her for her role but wanted her to take responsibility for doing an activity which had an effect on him. He agreed that, in a terse sense, he was partly blaming her. When referred to his letter of February 2004, where Dr. Gorman refers to her persistence, he agreed that he was saying that she had a major role in initiating the physicality of the contact.

College counsel also referred Dr. Gorman to the memorandum of the College investigator from her June 13, 2005 visit to him. When it was suggested to him that he was casting blame on the patient, he replied that he was merely describing to the investigator what happened. When it was suggested to Dr. Gorman that he withheld information such as the kiss on the lips or caressing, he agreed that he deliberately left out some details

because he did not wish to tell the College until he obtained counsel. Defence counsel observed to the Committee that no conclusions could be drawn with regard to withholding information as there is no record before the panel of the questions that were asked.

When College counsel pointed out to Dr. Gorman that a report from one of his therapists indicated that he questioned why she would report him to the College, he said that he had been describing to the therapist a myriad of feelings towards her, of which anger was one. This was because he thought that she truly liked him and had said that she would never do this to him or his family. Because he also had suffered, he felt that he had been a victim too, because Patient A had pushed him in a personal although not professional sense.

Testimony of Dr. Y

The Committee accepted Dr. Y's curriculum vitae as Exhibit 5 and qualified Dr. Y as an expert witness as a psychiatrist and psychoanalyst with extensive experience in transference and counter transference.

Dr. Y stated he did not know Dr. Gorman socially, but was his supervisor during Dr. Gorman's training in 1979. He initially saw Dr. Gorman in June 2005 as his therapist, subsequent to Dr**.** Gorman being reported to the College of Physicians and Surgeons of Ontario ("CPSO"). Dr. Y later changed to supervising Dr. Gorman's practice having signed an undertaking with the CPSO and a Toronto Hospital. He noted that Dr. Gorman is limited at the hospital to male patients and that his private psychotherapy sessions are videotaped and females are required to read and sign the allegations against him.

Dr. Y testified that he did not feel that Dr. Gorman's patients are at risk. He assessed Dr. Gorman clinically and read the College file on the complainant's case and discussed this with Dr. Gorman. His personal assessment of Dr. Gorman showed that he had no significant mental illness but has had a situational adjustment disorder. This was a temporary reaction to the situation that Dr. Gorman was in. He also displayed some non-

pathological obsessive personality traits. He appeared knowledgeable, intellectual, with good judgment and decision-making and was very open. He is restrained in his emotion. Dr. Y testified that Dr. Gorman has a marked social conscience, and is humanistic with motivation to help the disempowered but tending to become overextended and perhaps not always a neutral observer. He displays a degree of naïveté in his behavior and has limited experience with females. He is romantically attached to his wife. There was no evidence of past abuse of female patients, abuse of drugs, or financial problems.

Dr. Gorman's practice showed a limited experience with psychoanalysis, and that he does not have a great deal of experience with transference and counter transference within psychoanalytic relationships**.** He noted that transference and counter transference are seen in psychotherapy as well**,** although to a lesser degree.

Dr. Y testified that psychoanalysis normally uses free association without censorship to retrieve childhood wishes and also works with sexual material and commonly induces erotic transference, both conscious and unconscious. It is important that this transference be discussed as part of the therapy. It may, however, induce resistance in which case a supervisor should be consulted. The issues brought up by the patient can induce erotic feelings in the therapist creating counter transference. Much of this counter transference may be unconscious.

Dr. Y testified that there were several factors accounting for Dr. Gorman's problems with counter transference with Patient A. He was intellectually attracted to the patient and found her engaging, bright and energetic. There was a parallel in the situation with his wife, who had a limited education and came from a conflicted family. Her idealization of him and his support of her, resulted in a positive relationship. Similarly, Dr. Gorman would mix up the patient with his daughter, whom he found difficult to discipline or say no to.

This particular patient had a strong attachment to her father who abandoned the family and was unreceptive to her attempts to contact him. Looking for a strong father, she

idealized the situation with Dr. Gorman. She was angry with her mother because she did not keep her father at home. That she wanted to attract Dr. Gorman and have him leave his wife, had escaped Dr. Gorman. This was because he wanted to be idealized so his virtues would mirror her wants. Although Dr. Gorman was aware of the erotic transference to some degree, he felt he could control the situation because he loved his wife and because of his intellect. Because Dr. Gorman had some experience with analysis, he felt that he could deal with it, however, the intensity of the transference and counter transference overwhelmed him. All of this would have been apparent to a supervisor.

Dr. Y also testified that there should have been no “kibitzing” with the patient and Dr. Gorman should have been more cautious in revealing his personal life. Although the showing of the photo album is not in itself inappropriate, Dr. Gorman should have been more cautious sitting beside her. While the patient's position on the couch in itself is not important, her turning around and laying prone displayed some resistance to therapy. Dr. Gorman's reading of her literary efforts should have been done to explore her feelings during a session, rather than as a literary critic. With regard to the hand touching, Dr. Gorman should have been more cautious and discussed it rather than acting on it. His repeated attempts to contact the patient at the end of therapy was mainly due to his concern for the patient along with an element concerning his deceased daughter, although there may be some part of a desire to prevent damage to him and/or continue the romantic liaison. Dr. Y opined that although Dr. Gorman’s behavior was inadvisable, inappropriate, and adolescent, it was not his usual behavior and was quite specific to the situation.

Dr. Y testified that, in this case, the erotic transference occurred early on, and Dr. Gorman should have readily recognized it. In addition, there was strong, partly sexual, counter transference early on, but his desire to be idealized partly accounts for this getting out of control. After the violations occurred, Dr. Gorman should have terminated the therapy and obtained a referral.

When asked if Dr Gorman needs supervision in doing psychotherapy, Dr. Y responded that it is essential, not just to prevent his reoffending, but in order to be effective. He added that Dr. Gorman has difficulty saying “no” to patients, particularly female patients, although he is making progress in this area.

Testimony of Dr. X

The Committee accepted Dr. X’s curriculum vitae as Exhibit #6 and accepted Dr. X as a psychiatrist and psychoanalyst with extensive experience.

Dr. X testified that he has some social contact with Dr. Gorman, but is not a close friend. He supervised Dr. Gorman during Dr. Gorman's training. He took Dr. Gorman on as a patient in March 2006 and then, in April 2006, began couple therapy with Dr. Gorman and his wife. They both continue under his care now and for the foreseeable future. As well as his clinical assessment of Dr. Gorman and his wife, he has reviewed Dr. Gorman's notes on Patient A.

Dr. X testified that psychoanalysis forms an intense relationship between two people forming a therapeutic alliance, allowing them to step back and analyze the strong emotions induced. This therapeutic alliance did not form in this case. It was more like a conversation than analysis. Although the patient was very bright, motivated, wanted help and wanted Dr. Gorman to be strong, she was seductive and sexualized a great deal. She used her sexuality as an adaptive advantage to give her control over situations even if they were self-destructive. Although aware of the sexual pressure, Dr. Gorman was not aware of the destructive element. Dr. Gorman, never having experienced this before, did not appreciate this situation, which only a very experienced psychoanalyst could handle without a supervisor. Rather than say, however, that Dr. Gorman mismanaged transference and counter transference, Dr. X preferred to say that he was overwhelmed by the problems in his own life and that he was somewhat naïve and gullible.

Dr. X testified that, despite this, Dr. Gorman and Patient A worked together to the summer of 2002, and then there was the previously noted change. Beginning in June

2002, Dr. Gorman's daughter had an apparent recurrence of her hemiplegic migraines (her death occurred September 24, 2002). Because of the increased tension in his life in July, Dr. Gorman began to reveal more of himself and allowed the patient into his life. It is noteworthy that Dr. Gorman's relationship with his daughter was an issue and that she had a behavioral problem and manipulated him, as did this patient. Also, at the end of June, the patient had a problem with her relationship with her own father.

Dr. X testified that another factor underlying Dr. Gorman's difficulty with the situation is that he tends to value intellect over feelings. Thus, he may dismiss a patient's negative or hostile feelings (or the extent of those feelings) even though he is trying to help. Dr. Gorman has a problem identifying destructive feelings. This happened**,** as well**,** in his relationship with his own wife.

With specific reference to the hand holding incident, Dr. X testified that this once was an accepted part of therapy but, given boundary issues today, it is no longer acceptable. Dr. Gorman, however, felt pressured to do this and gave in.

With reference to Dr. Gorman's efforts to contact Patient A after therapy ended in December, Dr. X testified that he was truly concerned for her welfare and also liked her. Had they gone to a therapist together, it might have worked, but because of mandatory reporting, this was not realistic. Indeed, mandatory reporting can be seen by the patient as betrayal.

Dr. X testified that this incident occurred because of the pressure from this particular patient combined with character traits in Dr. Gorman, and some particular factors in Dr. Gorman's life occurring at that time. This behaviour is not in Dr. Gorman's nature and it is unlikely he would take on such a patient without a supervisor in future.

Testimony of Mr. C

The Committee accepted the curriculum vitae of Mr. C as Exhibit #7. Mr. C is a licensed psychologist and director of the Walk In Counseling Center in the United States of

America. He has an honorary doctorate in psychology from the Minnesota School of Professional Psychology (1997). He has extensive experience in medical-legal matters concerning boundary violations by health professionals. He has done consulting work for governments, professional associations, and licensing bodies in many jurisdictions with regard to boundary violations.

The Committee accepted Mr. C as an expert in psychology, with expertise in boundary violations by professionals.

Mr. C wrote a report for defence counsel in June 2006 (updated in October 2006), based on material disclosed by the College to the defence. He also reviewed material such as interviews with colleagues of Dr. Gorman and his training doctors. He also interviewed Dr. Gorman's wife. He conducted phone interviews with Dr. Y and Dr. X (neither previously known to him). He has reviewed notes with regard to Dr. Gorman's testimony at this hearing. He conducted an interview in person with Dr. Gorman and administered two standard psychological tests and re-interviewed Dr. Gorman by phone.

Mr. C found no evidence of a psychosis or of a personality disorder, although he did find two personality traits, compulsiveness and narcissism. There was no evidence of drug or alcohol abuse. He felt that Dr. Gorman was experiencing a "midlife crisis", which is still not resolved, and was disoriented by a young female's interest in him. In addition, the reappearance of the symptoms of hemiplegic migraines in his daughter, with the implication that she might have a brain tumor, created a tension which had an impact on his professional work given the intensity of psychoanalysis that he did not fully appreciate. His daughter's tragic death added to the disorientation, although it did not fundamentally change it. The confluence of this extremely interesting patient, whom he found emotionally and physically attractive, exhibiting a strong erotic transference, which he had not experienced before along with the factors mentioned above, all predisposed him to this behavior.

Mr. C testified that Dr. Gorman truly believed that he would not have difficulty handling the erotic transference because he recognized it. However, he was not fully aware of the counter transference and, therefore, he did not obtain a consultation and was unwise in not having supervision.

Mr. C testified that, once the boundary violations occurred, Dr. Gorman should have obtained a consultation and, when the therapy ended, it was imperative to obtain consultation. His reluctance to do so was, in part, because of fear of being reported (reporting by professionals governed by the RHPA is mandatory in Ontario) and, in part, because he felt he could fix the problem and resume the previous therapy.

On cross-examination, Mr. C admitted that Dr. Gorman was also afraid that Patient A might seek revenge.

Mr. C testified that Dr. Gorman has terrible guilt and is very ashamed. Aside from the fear that he could lose his ability to practise and of his family situation (more poignant because his son is a practicing psychiatrist), he feels he has failed his profession. At one time, Dr. Gorman was angry with the patient and occasionally blamed her, but has, over the course of the proceeding, come to appreciate (emotionally, rather than just intellectually) that he has hurt Patient A.

Mr. C testified that Dr. Gorman's failures were not generalized but were case specific and, because he has developed insight, he would not do this again. Mr. C recommended for the protection of female patients that Dr. Gorman continue in psychotherapy, because of the long aftermath of this incident. It is important that his wife continue with him in this therapy as an aid to the therapy and because his "midlife crisis" is not yet resolved. Furthermore, he should continue with supervision of psychotherapy or psychoanalysis whenever dealing with female patients.

On cross-examination, Mr. C admitted that there were some new aspects in his second report which were not in the first report. The prostate problem and lack of sex drive were

not in the first report and were not discussed by Dr. Gorman then but were in the subsequent report. The “midlife crisis” was developed in the second report (after reflection, not new information).

Testimony of Professor D

The Committee accepted the partial curriculum vitae of Professor D as Exhibit #8. Professor D is a professor at an Ontario University in the Department of Psychology. He has extensive experience with bereavement, trauma and loss. The Committee accepted Professor D as an expert psychologist with expertise in trauma, bereavement and loss.

Professor D's report was based on notes and interviews disclosed by the College, and also on two interviews with Dr. Gorman and one with Dr. Gorman's wife. He also reviewed the psychological assessments of Dr. Gorman's deceased daughter.

Professor D testified that, in general, the death of a child greatly impacts the parents as it destroys their basic assumption that the world is a good, safe and purposeful place. The untimely death of a child causes the parents to question their values and entire belief system. In addition, it gives the impression that they, the parents, have somehow failed. In treatment, he generally sees parents three to five years in uncomplicated cases.

Professor D testified that, following hard on the apparent return of her hemiplegic migraine symptoms, the death of Dr. Gorman's daughter had a devastating impact on him.

This compounded the several factors that predisposed Dr. Gorman to his transgression. He did not have a long psychosexual history and was inexperienced and naïve with the interactions between males and females and not familiar with how to “read” females. He felt that as long as he acknowledged transference, he was protected from it and he mistook the highly erotic transference for normal transference.

On cross-examination, Professor D acknowledged that Dr. Gorman's age and midlife crisis may also be factors but he minimized them. Professor D also acknowledged that Dr. Gorman had a need to be idealized and a need for flattery and self validation.

Professor D testified that Dr. Gorman's loss history showed that he had never suffered many losses. Dr. Gorman was not familiar with his emotional self and had a cerebral approach of the "cool male" as is typical of males in general. This often works until there is a significant stress such as the death of a child and then the male becomes overwhelmed. In this particular family, Dr. Gorman has a strong, stereotypically male, cerebral style and had to be supportive of his much more demonstrative wife at his own psychological expense.

Professor D testified that the return of the symptoms of hemiplegic migraine in July 2002 induced a fear of his daughter dying or being incapacitated and destabilized Dr. Gorman. At one time before this, his daughter had lost her license because of an accident caused by her. With her persistent wish to drive, Dr. Gorman relented and let his daughter have a car in his name. There was a conflict between Dr. and Mrs. Gorman with regard to whether the daughter should drive at all. Following his daughter's death, because of his male stereotype in order to support his wife whom he could not confide in, he chose the patient to confide in. It is noteworthy that Dr. Gorman did not sit the full seven days of Shiva, but returned to work after three days, thus short-circuiting the grieving process. But, in doing this, he was not fully aware of the effect it would have on his behavior. It is also noteworthy that on the Thanksgiving weekend, when Dr. Gorman and his wife emptied the memento filled daughter's apartment, Mrs. Gorman was overwhelmed, and Dr. Gorman had no one to turn to. Indicative of the guilt that he felt at her death, is the fact that Dr. Gorman retained some of the clothing that his daughter died in.

Professor D noted a timeline in the boundary violations. His daughter's birthday was August 18, and a violation occurred later that August. Similarly, a violation occurred just after the emotional clearing of his daughter's apartment.

Professor D testified that the loss of his child and the guilt associated with this loss, along with the bond that developed between the patient and Dr. Gorman (whom he identified with his daughter), partially accounts for the ongoing contact after therapy ended. On cross-examination, Professor D admitted that there were other bonds with the patient such as his growing sense of familiarity, because she was attractive both emotionally and physically. This bond was in addition to his concern about the patient and his feeling that he could undo the problems that he had created. Not recognizing the loss that was driving him in the summer and fall of 2002, Dr. Gorman did not realize that he was not helping the patient. On cross-examination, Dr. D agreed that an element of Dr. Gorman's continued efforts to contact Patient A could be that he hoped that she would not become angry and report him. In addition, Dr. D agreed that Dr. Gorman had still not fully dealt with the loss of his daughter and, therefore, was still vulnerable in his personal and professional life in dealing with other patients.

Testimony of Dr. W

The Committee accepted the curriculum vitae of Dr. W as Exhibit 9. Dr. W is a psychiatrist and Associate Professor of Psychiatry at an Ontario University. He has numerous publications in refereed journals on empathy, counter transference and erotic transference (with significant citations). The Committee accepted Dr. W as an expert in psychiatry, psychoanalysis and psychotherapy with specialized interest in boundaries.

Dr. W testified that he has known Dr. Gorman for about thirty years as an acquaintance whom he sees every year or so at conferences. Dr. W prepared his report from disclosure documents, and also on review of the clinical charts of Dr. Gorman. He also reviewed some of the hearing testimony from the first phase of the hearing in July 2006, and conducted five sessions (eleven hours) of interviews with Dr. Gorman.

To begin his testimony, Dr. W explained that empathy is the experiencing by the therapist of what the patient is feeling. Counter transference refers to the unconscious feelings stirred up in the therapist during the course of the psychotherapy. It consists of the baggage that the therapist brings with him and what the patient puts in. These thoughts

and feelings are important to therapy but, if not recognized, they may obstruct the treatment. Boundaries are necessary or the therapist may get lost in his own feelings. Boundaries and counter transference are inextricably linked in that boundaries are important to establish that safe area for the patient so that the submerged material may come out and, once out, the therapist can discuss them with the patient. The crossing of boundaries destroys that safe area.

Dr. W's assessment of Dr. Gorman was that he did not have a major psychosis or personality disorder. He did have two personality traits. The first was that he was obsessive and the other was a minor masculine identity problem (i.e., his self esteem as a male). This latter "hairline fracture" in his masculine identity stemmed from his relationship with his meek father and with certain of his own physical attributes such as his short stature. Hospitalization for three months as a child with poliomyelitis left him with leg weakness, for which he compensated with bodybuilding. He has benign prostatic hypertrophy, which is a sign of aging and may affect his feelings of sexual prowess. Eye surgery in his early twenties may have affected his “macho image”.

Dr. W noted that it is important for all psychoanalysts to undergo analysis themselves in order to know their blind spots. Dr. Gorman's own psychoanalysis, when he was in training to be an analyst, was flawed because his psychoanalyst had a psychotic breakdown two years into the analysis and, prior to that, had an ethical boundary violation.

Dr. W explained the transgressions in this case as follows. It is noteworthy that the patient was concerned with relationships with older men. Her transference to Dr. Gorman shifted to erotic transference as the psychotherapy changed to psychoanalysis. This transference eased the "hairline fracture" in his personality and he missed its hostile and destructive elements. Dr. Gorman seeks to avoid confrontation, because of his obsessive personality trait, which seeks order, and thus failed to stop her despite the obvious warning given in, "I'm not going to bite you". Because Dr. Gorman found the patient attractive, he collapsed and lost his observer role as the therapist.

Dr. W noted the ambivalence evidenced in his lost fight to regain control, which indicates that he is not psychotic or predatory. Dr. W noted no other predisposing factors.

With regard to Dr. Gorman's efforts to maintain contact after the boundary violations, Dr. W opined that Dr. Gorman was remorseful and truly concerned and trying to salvage his therapeutic ego. On a personal level, he had lost someone he loved and, although she reciprocated for some time, she eventually moved on.

Utilizing the typology of sex offenders developed by Dr. V, Dr. W testified that this was a combination of "masochistic surrender" (those who wish to appease as opposed to confront), and "lovesick" (the observing ego of the psychotherapist is drawn into the emotion of love). This is the same as the "situational offenders" of Mr. C. With regard to the counter transference in this case, Dr. W testified that counter transference is subconscious and, although intellectually aware, a therapist may easily miss it, as did Dr. Gorman.

Dr. W testified that Dr. Gorman now has insight into his transgressions and is aware of his "hairline fracture" that makes him vulnerable. He clarified later on that this "hairline fracture" and his non-confrontational nature, which still remain, given the hothouse of emotions stirred up in psychotherapy, renders Dr. Gorman more vulnerable and, thus, it is important that he always be monitored. In addition, Dr. Gorman feels tremendous guilt and self-loathing and is remorseful for the patient. Dr. W did note that Dr. Gorman had displayed anger and feelings of betrayal by the patient, which was to be expected from a jilted lover and/or one experiencing loss. On cross-examination, he did not agree that either of these emotions were continuing.

Dr. W stated that he did not feel that Dr. Gorman would re-offend, because Dr. Gorman does not fulfill any of the criteria for those types of sexual offenders who will re- offend. In addition, his great guilt, his obsessive personality and his insight into his own problem, make re-offence unlikely. On cross-examination, Dr. W agreed, however, that Dr.

Gorman needs ongoing supervision with female patients and requires monitoring to prevent re-offence.

Dr. W testified that the therapy that Dr. X is giving to Dr. Gorman and his wife and the supervision of his practice by Dr. Y is quite appropriate. He felt the supervision and treatment must overlap and that the supervision in time may shift to only female patients with certain problems.

On cross-examination, Dr. W was asked to comment on a statement he made in his report about Dr. Gorman's lack of embarrassment. He explained it by stating that Dr. Gorman was able to compartmentalize, that is, rather than feeling embarrassment, he reenacted it.

Dr. W was also cross-examined on some aspects of his report in which he referred to the patient giving Dr. Gorman a barrage of attention and trying to get Dr. Gorman back into a physical relationship. He was also asked about Dr. Gorman's reported openness to the College, reflecting his feeling of guilt. Dr. W agreed that, although Dr. Gorman seemed genuinely honest, there could be areas where he was lying or confabulating. He also agreed that Dr. Gorman did not tell the whole story to the College investigator but stressed that this probably was for medical legal reasons.

Letter from Family Physician

The Committee accepted into evidence a letter from Dr. U, family physician, to Dr. Gorman from 1992 to 2003, as Exhibit 11. In this letter, the diagnosis of benign prostatic hypertrophy in Dr. Gorman was asserted and accepted by the College although College counsel noted that the letter does not speak to ejaculation problems.

Character References

The Committee accepted a brief of character reference letters for Dr. Gorman as Exhibit 12. The letters from colleagues, friends and patients, attested to the good character and excellent professional record of Dr. Gorman. The Committee, while aware of these

letters as mitigating factors, also placed a low weight on their usefulness concerning the appropriate penalty.

FINDINGS and REASONS FOR FINDINGS

(A) On Witness Credibility:

Patient A

The Committee found this witness to be credible. She was forthright in her presentation and appeared honest in her feelings. Her testimony was consistent with the written record and she freely pointed out when she did not remember particulars and was accepting of other explanations. Her testimony was internally consistent, and congruent with external facts heard by the Committee. Moreover, she appeared to have nothing to gain by lodging her complaint and waited doing so for more than a year after the end of therapy, apparently stimulated by Dr. Gorman's repeated contact culminating in a self serving letter of explanation.

Dr. Gorman

The Committee found Dr Gorman to be less than forthright in his presentation, admitting the obvious correct statement and then inserting an explanation that was self serving. His recording in Patient A's chart did not reflect what is contained in his written communications with her or with his testimony. He still appears to lack some insight into his emotional attachment to Patient A and this colours his testimony, although he clearly does not see this aspect himself and, in his mind, he thinks he has full insight.

Dr. Y

The Committee accepted Dr. Y as an expert psychiatrist with extensive experience in transference and counter transference. However, because of his association with Dr. Gorman as a training supervisor in 1979 during Dr. Gorman's training in psychoanalysis, the Committee reduced the weight given to his opinion on the mitigating aspects for Dr. Gorman's transgressions. This was in view of the testimony of Dr. W suggesting the flaw in Dr. Gorman's training because of the psychotic breakdown of Dr. Gorman's

psychoanalyst during his training. This fact ought to have been known to Dr. Y who was involved in his training, subsequent assessment of his practice and person, and is his ongoing practice supervisor. It should have been imparted to the Committee in his testimony.

Dr. X

The Committee accepted Dr. X as an expert psychiatrist. His testimony as to Dr. Gorman's present state was helpful. It was unclear if his training association with Dr. Gorman was during or prior to his training in psychoanalysis. His testimony with reference to the unfolding of this case was, nonetheless, helpful and credible.

Mr. C

The Committee accepted Mr. C as an expert on boundary violations. He was a disinterested witness with extensive experience with boundaries and boundary violators and was found to be credible in his testimony.

Professor D

The Committee accepted Professor D as an expert on bereavement, trauma and loss. He was found to be disinterested and credible with reference to the affect of Dr. Gorman's daughter's illness and death had on Dr. Gorman with particular reference to mitigation.

Dr. W

The Committee accepted Dr. W as an expert in psychoanalysis and psychotherapy with specialized interest in boundaries. The Panel found him credible with reference to his area of expertise. Despite the question of how candid Dr. Gorman was with him in describing his openness with the College investigator, the Committee accepted his testimony and assessment of the case and Dr. Gorman.

(B) On the Allegations:

1. Sexual abuse and disgraceful, dishonourable or unprofessional conduct.

1.1 Dr. Gorman, a psychiatrist, and Patient A were involved in a physician/patient relationship from approximately 2002 to early 2003. The physician/patient relationship was psychotherapeutic (the "Relationship").

The OHIP records, the patient chart, and the testimony of Dr. Gorman and Patient A clearly prove beyond any doubt (and Dr. Gorman admits in his response to the allegations), that a psychotherapeutic physician/patient relationship existed from approximately 2002 to early 2003.

1.2 During the course of the Relationship, between approximately August 2002 and February, 2003, Dr. Gorman, sexually abused patient A by engaging in acts and behavior including; (i) lying next to each other, (ii) caressing, (iii) embracing, (v) kissing, including kissing on the lips, (vi) fondling her breasts, and (xi) engaging in a simulated act of sexual intercourse.

The testimony of both Patient A and Dr. Gorman, and Dr. Gorman's response to the allegations clearly prove that the above activities occurred between August 2002 and December 2002. In addition, Dr. Gorman testified to and admitted kissing the patient's bare breasts and nipples during this time period.

In his response to the allegations, Dr. Gorman acknowledged that the facts above constitute professional misconduct in that he engaged in what would be reasonably regarded as disgraceful, dishonourable or unprofessional conduct and sexual abuse of a patient, pursuant to paragraph 1(1)33 of O.Reg. 856/93 under the *Medicine Act* and clause 51(1)(b.1) of the Code, respectively.

The Committee notes that there was a statement by Patient A that Dr. Gorman said that he ejaculated during the "simulated act of sexual intercourse". The Committee does not doubt the veracity of Patient A in stating that Dr. Gorman said words to that effect. However, given the explanation by Dr. Gorman of this event, and lacking any evidence to counter this explanation, and lacking any further description of this event other than that included in the evidence detailed above, the Committee did not find that there was clear, cogent and convincing evidence that ejaculation occurred sufficient to meet the Bernstein Standard.

The Committee also noted that College counsel, in closing argument, referred to this event as “akin to” masturbation. Given the enormous implications of that term in regards to penalty and noting that masturbation is not mentioned in the Specifications attached to the Notice of Hearing and that no specific evidence was introduced on that topic (other than Patient A stating in cross-examination that masturbation did not occur during the period of the sexual incidents), the Committee makes no finding on the subject of masturbation.

Section 1.2(iv) Dr. Gorman does not admit to straddling the patient. In his testimony, he indicated that their knees once touched while he was standing and she was seated. He also admitted to lying on her and that she lay on him. He also recounted the psychological meaning to the patient of straddling. The patient, in her testimony, alludes to his straddling her, but neither emphasizes nor expands on it. Given the evidence, the Committee did not conclude to the Bernstein standard that Dr. Gorman straddled the patient.

Section 1.2(vii) Dr. Gorman denied placing Patient A's breast in his mouth but admitted that his mouth was on patient A's breast. The testimony of Patient A and Dr. Gorman are similar to the extent that the breast entered Dr. Gorman's mouth in the act of his sitting up. There was no evidence that he tried to prevent this happening or tried to actively disengage. Although he did not place the breast in his mouth by hand, the Committee concluded that he allowed the breast to be in his mouth and, given the circumstances, the Committee found that section 1.2(vii), is proven to the Bernstein standard. This is a boundary violation and sexual abuse of a patient and supports both allegations.

Section 1.2(viii) Dr. Gorman denies telephoning Patient A from a hotel room and inviting her to come and join him. Both Dr. Gorman and Patient A described the phone call to her prior to the time she was to run a marathon. Patient A testified that Dr. Gorman said he was in a hotel room, eating chocolate and strawberries. She admitted,

however, that she did not know if indeed he was in a hotel room and that he could be calling from anywhere. No corroborative evidence was introduced. In addition, she did not testify that he asked her to come and join him, but that she may have inferred this in that she knew that his wife was away. Dr. Gorman denied calling from a hotel room but admitted that he might well have said jokingly that he was calling from a hotel room while eating chocolate and strawberries, as such a scenario had been discussed between them at a previous time. Her testimony concerning this was credible as the Committee understands that she might well infer this as a real invitation**.** The Committee did not conclude to the Bernstein standard that Dr. Gorman had called Patient A from a hotel room and had invited her to come and join him.

Section 1.2(ix) Dr. Gorman denied ever inviting Patient A to "get together" with him, while his wife was away. Patient A testified that they had discussed the mechanics of having an affair, but did not discuss any particular time. She also testified that, at the time of her running a half marathon, she knew from previous information that Dr. Gorman's wife was away. She also testified that Dr. Gorman called her then, but she did not specifically say that he suggested that they get together, other than that he come and watch her run the half marathon. The Committee therefore did not conclude to the Bernstein standard that Dr. Gorman invited her to "get together" with him, while his wife was away.

Section 1.2(x) Dr. Gorman denied asking Patient A to let him perform oral sex on her but admitted that references to oral sex were made by both him and Patient A only after Patient A asked Dr. Gorman to “talk dirty” to her. In her testimony, Patient A stated that they discussed the topic of oral sex on more than one occasion. Although she was unclear in her testimony as to exactly when he asked to “go down on her”, given the context of the caressing incidents and Patient A’s general credibility, the Committee found on the Bernstein standard that Dr. Gorman asked her to let him perform oral sex on her.

Section 1.3 Dr. Gorman denied that, in an e-mail dated late September, 2002, he sent Patient A an "essay" containing sexual innuendo. He asserted that the essay was provided to Patient A at her request, for her to read a sample of his creative writing (the essay having been entered by Dr. Gorman in a competition) and that it was not sexual. Patient A, in her testimony, admitted that she may well have asked to read such an essay in an effort to get to know him better and she was not offended by it. Dr. Gorman indicated that his purpose in giving this essay to her, at her request, was to establish rapport with the patient. Two expert witnesses indicated that they would not have provided such personal information. The Committee concludes that the essay does indeed contain sexual innuendo. The Committee found that section 1.3 is proven to the Bernstein standard. Despite one expert saying that this is permissible, the Committee, given the context of this case, finds that this is unprofessional conduct.

Therefore, having regard to the totality of the evidence, the Committee finds as proved to the Bernstein standard that Dr. Gorman engaged in what would be reasonably regarded as disgraceful, dishonourable or unprofessional conduct and sexually abused Patient A by engaging in acts and behavior including: 1.2 (i) lying next to each other; (ii) caressing; (iii) embracing; (v) kissing; including kissing on the lips; (vi) fondling her breasts; (vii) placing her breast in his mouth; (x) asking her to let him perform oral sex on her; (xi) engaging in a simulated act of sexual intercourse; and, 1.3 sending an essay containing sexual innuendo in an e-mail dated late September, 2002 to Patient A. The Committee also finds as not proven the allegations in relation to particulars 1.2 (iv), (viii) and (ix).

2) Disgraceful, dishonourable or unprofessional conduct.

2.5 During and after the course of the relationship, Dr. Gorman sent numerous pieces of correspondence of a personal nature to Patient A. This is admitted by Dr. Gorman, in his response to the allegations and is supported in the oral testimony of Patient A and Dr. Gorman as they refer to Exhibit 4. In addition, the Committee notes that Dr. Gorman asked that Patient A use the e-mail address accessible only to him. The Committee finds

that, having regard to all the circumstances, Dr. Gorman engaged in what members would reasonably regard as disgraceful, dishonourable and unprofessional conduct.

2.6 During and after the course of the relationship, Dr. Gorman made numerous personal telephone calls to patient A on both cellular and home telephones. This is admitted by Dr. Gorman in his response to the allegations and is supported by the testimony of Patient A and Dr. Gorman as they refer to Exhibit 4. The Committee finds that, having regard to all the circumstances, Dr. Gorman engaged in what members would reasonably regard as disgraceful, dishonourable and unprofessional conduct.

DECISION

The Committee finds that Dr. Gorman committed acts of professional misconduct:

(1) under paragraph 1 (1) 33 of O. Reg. 856/93, in that he has engaged in conduct or an act or 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; and,

(2) under clause 51 (1) (b. 1) of the Code, in that he engaged in sexual abuse of a patient.

PENALTY

As noted above, counsel for the College and counsel for Dr. Gorman agreed that the evidence presented in the first phase of the hearing could be used by the Committee in assessing the appropriate penalty with the exception of the matter of costs, which will be addressed in written submissions after the Committee has released to the parties its findings. Counsel, as agreed between them, made their submissions regarding the appropriate penalty as part of their closing arguments and prior to the Committee making its findings of fact set out above.

College counsel, in closing argument, said that revocation was warranted in this case, given: the sexual nature of the conduct occurring over a two month time span involving a vulnerable patient and an experienced psychotherapist; Dr. Gorman's "hanging on" to the patient; and, Dr. Gorman's evasion and lack of candor and failure to accept total blame despite his acceptance of the allegations. In addition, College counsel submitted that the "simulated act of sexual intercourse" was "akin to masturbation", even if not technically the same. It was pointed out that a finding of masturbation carries a mandatory revocation. College counsel also submitted that the defence experts all opined that Dr. Gorman had ongoing traits that make him vulnerable. Their agreement as to his need for treatment and supervision implies an ongoing risk to patients. College counsel filed a comprehensive brief of argument.

College counsel presented a single case purported to be similar enough in nature to this case, which resulted in revocation. In addition, the College asked that Dr. Gorman be reprimanded and, as the expense of the hearing was a result of his lack of candor and acceptance of blame, costs be awarded. This last matter will be expanded upon following this decision on penalty.

Counsel for Dr. Gorman argued for a reprimand and a suspension of eighteen to thirty months (six to eighteen months to be suspended after completion of a College sanctioned boundaries course), continued therapy with Dr. X, and supervision of his practice by Dr. Y or another qualified supervisor acceptable to the College (at Dr. Gorman's expense). The supervisor, aware of the circumstances of this case, would meet with Dr. Gorman every two weeks to review all his female patients. Defence counsel submitted that this would fulfill all the elements of a proper penalty (that is, denunciation, specific and general deterrence, and rehabilitation) and they offered as guidance, five purportedly similar cases.

Defence counsel pointed to several elements in this case. The acts constitute serious boundary violations but do not require mandatory revocation. Dr. Gorman takes full responsibility for the violations and has remorse. Dr. Gorman is not a predator, but rather

naïve. The violations arose mainly from his mismanagement of his unconscious counter transference and he has worked to rectify the problems leading to his transgressions. Several experts have testified to these points and the unlikelihood of repeat violations. Dr. Gorman's past unblemished record and the numerous letters entered as character references should be taken into account. Defence counsel also filed a comprehensive brief of argument.

The Committee considered the totality of the evidence used to reach its findings, the submissions as to appropriate penalty by counsel and the cases submitted for guidance, in reaching its conclusions regarding the disposition of this case.

PENALTY and REASONS for PENALTY

College counsel submitted the case of *CPSO v. Dr. Seidman* (October 28, 2002), which involved a 38-year-old pediatrician and a 15-year-old female patient who was sexually abused by Dr. Seidman. The abuse included naked bathing and oral and digital sex. The penalty was revocation. The Committee noted that there was considerable difference between the 15-year-old minor in *Seidman* and the 28-year-old sexually experienced patient in this case. Further, the abuse in *Seidman* was such that mandatory revocation was required. The Committee concluded that *Seidman* was not comparable enough to the subject case to be useful in guidance.

Counsel for Dr. Gorman submitted a brief of five cases. Following the submission, the College distinguished each case in reply.

The case of *CPSO v. Dr. Larry Scott Henderson (2005)* involved a family physician, who admitted to fondling the breasts and kissing a patient on two separate and isolated incidents in 1991 and 1994. Although the physician provided primary care and treatment for the patient and her children, he also provided counseling for her marital difficulties and depression. The physician admitted his guilt sparing the patient the need to testify. The penalty was a reprimand and a nine-month suspension. College counsel pointed out that in *Henderson* the doctor admitted his guilt and spared the patient the need to testify

and also that this had nothing to do with psychotherapy. The Committee considers that this case is not truly analogous to the case at hand.

The case of *CPSO v. Dr. Paul Vereshack (October 9, 1992)* was a Divisional Court decision reversing the penalty of revocation imposed by the College at a time prior to the present legislation. It involved two female patients and a male psychiatrist who was providing psychotherapy to the patients. At issue was experimental psychotherapy consisting of sensual touch (masturbation) to one of the patients over a two-year time span and for ten to twenty sessions for the other patient. The College argued that it was this reversal of the College penalty of revocation which was largely responsible for the new legislation in 1994. Such a case now would call for mandatory revocation. The Committee concluded that this case is not pertinent to the case at hand.

The case of *CPSO v. Dr. Diana Silver Wyatt (December 1999)* involved a female general practitioner doing psychotherapy. She entered into a lesbian relationship one month following cessation of the doctor-patient relationship. The penalty given was restriction of her practice from psychotherapy and a twenty-four month suspension, twenty months of which would be suspended if an appropriate College sanctioned course was completed. College counsel submitted that the misconduct occurred after the termination of the doctor/patient relationship, was not clandestine and the patient was spared having to testify. The Committee was of the opinion that this case also did not provide substantial guidance as it did not involve an ongoing doctor/patient relationship.

The case of *CPSO v. Dr. Allan Ralph Abelson (December 2003)* involved a general practitioner doing psychotherapy. It involved sexual touching as a form of therapy over a two-year period. The penalty was a reprimand and a suspension for a period of 12 months, and limitations on his practice with respect to providing individual psychotherapy. College counsel submitted that this case was not apposite in that it involved a general practitioner doing psychotherapy and was not a "love" relationship. The Committee concluded that this case involved the misapplication of therapy by an

inexperienced general practitioner and did not reflect the case in hand in any significant way.

The case of *CPSO v. Dr. E. G. Silva-Ruette (May 2003)* involved a psychiatrist performing inappropriate physical examinations on a patient. The penalty was a reprimand and a suspension for a period of nine months and a limitation on Dr. Silva-Ruette's certificate of registration that he not conduct any physical examination on his female patients. Costs were also awarded. The Committee found no similarities with the case under consideration.

In summary, the Committee concluded that this case was unique in that it involved a trained psychoanalyst in a doctor/patient setting with a vulnerable patient in psychoanalysis becoming involved in a sexual relationship well into the analysis. As such, none of the cases provided are reflective of this case.

Given the evidence presented and the opinions of expert witnesses, the Committee appreciates that the behaviour of Dr. Gorman was abhorrent**.** The public and the College rightly expect that a psychiatrist purporting to be a trained and experienced psychoanalyst and versed in transference and counter transference, should meet the standards of the profession. Despite this clear expectation, Dr. Gorman broke a fundamental principle of psychoanalysis, that is, to provide a “safe environment” in which the patient may express and explore the emotions which are affecting her wellbeing. The patient had every right, as part of her therapy, to express herself, to explore the boundaries and to develop the feelings that she had.

Patient A has been described as a difficult case and a challenge to any psychoanalyst, but she was “upfront” about herself from the beginning. Despite this, Dr. Gorman did not seek supervision then or, later, when he began to question his control of the therapy. To compound his error, after the violations occurred, he refused to seek help for his patient but persistently kept in contact with her with self serving justifications of his actions which clearly could not help her.

Although we lack an impact analysis, the Committee appreciates the impact this has had on this patient from parts of her testimony and her letters and e-mails to Dr. Gorman. Her initial problem with self worth has been increased by "the baggage I will carry for the rest of my life." Perhaps best reflective is the e-mail Patient A sent to Dr. Gorman just before her final appointment in April 2003. "I can't grasp what is so special/different about you that put me and keeps me under your spell." And later, "I will always be bitter that you did not cherish me enough to keep things platonic so that we could keep seeing each other. And then I will always be hurt that you only wanted to be with me romantically in the privacy and safety of your office…. never as a woman and the only woman in your life." This is the sad end result of two years of psychoanalysis by an experienced psychoanalyst**.**

However, the Committee does not agree that revocation is appropriate for this case. This is the severest penalty that could be imposed but clearly the conduct, although very serious, is not as serious as those outlined in the legislation for which there is mandatory revocation. "Simulated sexual intercourse" is not sexual intercourse particularly where the participants pointedly discussed and rejected actual sexual intercourse and stated that intercourse did not occur. "Akin to masturbation" is not mentioned in the Particulars to the Allegations, is not defined and scant evidence was presented specific to this to justify revocation. The Committee notes that there is a range of conduct that comprises sexual abuse from words and gestures to sexual acts that require mandatory revocation and that revocation is an available penalty option even when not mandated by the findings made**.** In this case, the Committee believes it has taken the measure of Dr. Gorman's conduct in choosing a penalty less than revocation**.** In addition, Dr. Gorman is not a predator but, rather, a situational offender, whose predisposing factors pertain to psychotherapy as opposed to the entire gamut of psychiatry.

The Committee has concluded that a substantial period of suspension with restrictions is warranted. In arriving at this, certain mitigating and aggravating factors were taken into

account and weighed. Inherent in this decision is the concept of rehabilitation where feasible.

The Committee notes that Dr. Gorman has an unblemished record and has excellent character references from a wide variety of patients and colleagues. He is a situational offender and not a predator. The Committee is aware of, and has taken into consideration**,** the effect that Dr. Gorman's daughter's unfortunate illness prior to his first boundary violation, and her subsequent tragic death, had in contributing to this situation. This is a mitigating factor but is countered in that had he had a supervisor (and he chose not to), the repercussion on Patient A may not have happened. His "midlife crisis" was dismissed as being neither an excuse nor a defence for a trained professional, but is a factor in his rehabilitation. Similarly, his personality traits are a factor in considering restrictions and rehabilitation but not in considering the severity of his penalty. His flawed training is also a consideration in restriction on his practice. The Committee also considered his lack of insight into what transpired and his continued attempts to explain his actions expressed as late as those explanations given in Exhibit 13.

The Committee was also cognizant of the expert consensus on the training of psychoanalysts and the universal problem of subconscious counter transference. The Committee is also aware from testimony that Dr. Gorman has already completed a boundaries course at the University of Western Ontario. He is in continuing therapy with Dr. X. He has his private practice supervised by Dr. Y and is restricted from seeing female patients in his hospital practice. Although the boundaries course and his seeking therapy may be considered as mitigating factors, they are diluted by the fact that he sought these only after being reported to the College.

The Committee has concluded that Dr. Gorman should be restricted from doing psychoanalysis. One of the defence experts described the chart of Patient A as reading more like a conversation than an analysis. The necessity for all psychoanalysts to undergo psychoanalysis as a prerequisite to their training has been stated and it was stated that his was flawed. The Committee is concerned that he was certified as a psychoanalyst

despite this problem. Given his character flaws and blind spots coupled with his age as was pointed out by an expert witness, it is unlikely that he could undergo effective psychoanalysis, and thus be able to do effective psychoanalysis on any patient.

The Committee concluded from the evidence that Dr. Gorman should attend a course in medical ethics. It is unacceptable that any psychiatrist undertake without a supervisor to do psychotherapy, let alone psychoanalysis, with a patient of the opposite sex whom he finds physically attractive, given the emotions necessarily stirred up in the therapy and the subconscious nature of counter transference. It is unacceptable that he would continue treating a patient with a condition with which he has limited experience**,** and when he questions whether the patient is getting beyond him, without a consultation**,** when one is readily available. It is unacceptable to persist with therapy after boundaries have been broken which render effective treatment improbable without a consult. A boundaries course is unnecessary in that one has already been taken. Furthermore, the boundaries were known to Dr. Gorman. His problem was in not keeping them in the face of his inability to recognize the counter transference**,** his attraction to the patient**,** and his own personality traits.

A suspension of twenty-four (24) months, of which twelve (12) months will be suspended on completion of an ethics course acceptable to the College, and contingent on his continuation in psychotherapy with a therapist acceptable to the College, and supervision of his psychotherapy and psychodynamic treatments of female patients, accompanied by a fine of $15,000 payable to the Treasurer of Ontario, will underline the profession's abhorrence of this behaviour and serve as a deterrent generally and to him specifically.

It was felt that a longer suspension might have been warranted but that would impede his rehabilitation and ability to resume any psychiatric practice (especially that not dependant on psychotherapy). While there is no doubt some concern that a prolonged suspension may have a collateral effect on his practice and hospital patients, this factor is not a major one in determining penalty. The safeguarding of the public from unprofessional

behaviour and maintaining the public trust in the profession are paramount factors. As an additional deterrent**,** a fine was determined to send an effective message.

The lengthy suspension and fine will serve as an effective specific and general deterrence better than an even longer suspension alone would do. The ordered combination also more closely deals with rehabilitation objectives and, in a physician of Dr. Gorman's age, better meets all the objectives of imposing a penalty.

Dr. Gorman's need for continuation in psychotherapy (as suggested by the defence) is warranted by his persisting personality problems, persisting "midlife crisis", and his incomplete grieving of his daughter's death, all of which may affect his ability to deliver good psychotherapy. Similarly, the need for supervision of his female psychotherapeutic practice is obvious and conceded by the defence.

Lastly, a reprimand, even if it were not mandatory, is warranted. This is to express the profession's abhorrence of this violation of a vulnerable patient and a warning to others of the pitfalls involved in psychoanalysis. It is most important that the public be assured that this behaviour will not be tolerated by the profession.

ORDER

Therefore, the Discipline Committee orders and directs that:

1. The Registrar suspend Dr. Gorman's certificate of registration for twenty-four (24) months to begin two (2) weeks from the date of this order. Twelve (12) months of this suspension is to be suspended if Dr. Gorman successfully completes an ethics course acceptable to the College and continues in psychotherapy with a therapist acceptable to the College for as long as the therapist deems necessary, but not to be less than two years.

2. The Registrar impose the following terms, conditions and limitations on Dr. Gorman's certificate of registration:

i) Dr. Gorman is restricted from doing psychoanalysis.

ii) Dr. Gorman's practice in psychotherapy and psychodynamics, with regard to female patients, be supervised at Dr. Gorman's expense by a supervisor acceptable to the College and who has read the decision of the Discipline Committee. The supervisor will sign an undertaking acceptable to the College to meet with Dr. Gorman and review the cases of all female patients every two (2) weeks. After two (2) years, the frequency of the meetings may be reduced to once (1) per month if deemed acceptable by the College following the report of the supervisor. The supervisor will report in writing to the College every six (6) months on the state of Dr. Gorman's practice as regards female patients.

iii) Dr. Gorman continue in psychotherapy with a therapist acceptable to the College for not less than two (2) years and thereafter as long as the therapist deems necessary. The therapist, who has read the decision of the Discipline Committee, will sign an undertaking acceptable to the College to act as Dr. Gorman's therapist.

3. Dr. Gorman attend before the Committee to be reprimanded on a date to be fixed by the panel or no later than three (3) months from the date this order becomes final.

4. Dr. Gorman pay a fine of $15,000 to the Treasurer of Ontario within one (1) month of the date this order becomes final.

5. Any future request for a variation from this order is to be brought before the Discipline Committee.

6. The parties may deliver written submissions with respect to costs within twenty one (21) days from the date of this decision.

Indexed as: Gorman, R (Re)

DISCIPLINE COMMITTEE OF
THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

DR. M. DAVIE (CHAIR)	**)**	**Hearing date:** May 2, 2011
DR. E. ATTIA (PhD)	**)**	**Decision Date:** June 8, 2011
DR. W. KING	**)**	**Release of Written Reasons:** June 8, 2011

B E T W E E N:

DR. RICHARD GORMAN

(Moving Party)

- and -

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

(Responding Party)

ORDER AND REASONS FOR ORDER
(On a Motion to Vary the Order of the Discipline Committee of March 26, 2007)

INTRODUCTION

On May 2, 2011, the Discipline Committee (the "Committee") heard a motion brought by Dr. Gorman for an order seeking to vary a term, condition and limitation imposed on his certificate of registration pursuant to an order of the Committee made on March 26, 2007 (the "2007 Order").

THE MOTION

The member's Notice of Motion sought:

1. An Order eliminating the supervision requirement contained in paragraph 2 (ii) of the 2007 Order, as of April 9, 2011; or

2. In the alternative, an Order varying paragraph 2 (ii) of the supervision term of the Order to exclude Dr. Gorman's hospital practice from the scope of supervision immediately;
3. An Order reducing the frequency of private practice supervision as specified in paragraph 2 (ii) of the Order to four times a year (quarterly) rather than monthly; and
4. Such further and other relief as counsel may advise.

The Committee considered the materials filed in the Motion Record of applicant Dr. Gorman, and heard the submissions of counsel for Dr. Gorman and counsel for the College who took no position with respect to the motion.

BACKGROUND

In 2006, the Discipline Committee of the College of Physicians and Surgeons of Ontario made a finding at a contested discipline hearing that Dr. Gorman committed acts of professional misconduct:

(1) in that he engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional; and

(2) in that he engaged in sexual abuse of a patient.

The allegations concerned a single female patient. Dr. Gorman admitted some of the facts alleged against him, acknowledging that these constituted professional misconduct, including sexual abuse of a patient, as alleged in the Notice of Hearing. He disputed other facts alleged against him.

Having found the allegations to be proved to the requisite standard, the Committee made the following penalty order, that:

1. The Registrar suspend Dr. Gorman's certificate of registration for 24 months to begin two weeks from the date of the decision. Twelve months of the suspension is to be suspended if Dr. Gorman successfully completes an ethics course acceptable to the College and

continues in psychotherapy with a therapist acceptable to the College for as long as the therapist deems necessary, but not to be less than two years.

2. The Registrar impose the following terms, conditions and limitations on Dr. Gorman's certificate of registration:

   i) Dr. Gorman is restricted from doing psychoanalysis.

   ii) Dr. Gorman's practice in psychotherapy and psychodynamics, with regard to female patients, be supervised at Dr. Gorman's expense by a supervisor acceptable to the College and who has read the decision of the Discipline Committee. The supervisor will sign an undertaking acceptable to the College to meet with Dr. Gorman and review the cases of all female patients every two weeks. After two years, the frequency of the meetings may be reduced to once per month if deemed acceptable by the College following the report of the supervisor. The supervisor will report in writing to the College every six months on the state of Dr. Gorman's practice as regards female patients.

   iii) Dr. Gorman continue in psychotherapy with a therapist acceptable to the College for not less than two years and thereafter as long as the therapist deems necessary. The therapist, who has read the decision of the Discipline Committee, will sign an undertaking acceptable to the College to act as Dr. Gorman's therapist.

3. Dr. Gorman attend before the Committee to be reprimanded on a date to be fixed by the panel no later than three months from the date this order becomes final.

4. Dr. Gorman pay a fine of $15,000 to the Treasurer of Ontario within one month of the date this order becomes final.

5. Any future request for variation from this order is to be brought before the Discipline Committee.

6. The parties may deliver written submissions with respect to costs within 21 days from the date of this decision.

The order was dated March 26, 2007. It is the understanding of the Committee on the uncontested evidence filed with the Committee that Dr. Gorman complied fully with all of the terms of this order.

It is from the terms contained in paragraph 2 (ii) of this order that Dr. Gorman's motion sought variance.

EVIDENCE

Three reports were tendered in evidence in support of Dr. Gorman's motion, one from his treating psychiatrist, Dr. X, and two from his practice supervisors, Dr. Y and Dr. Z.

Dr. X treated Dr. Gorman in psychotherapy at a frequency of once per week from March 2006 (prior to the commencement of the hearing) until April 2009, a total of just over three years (including slightly more than two years following the date of the 2007 Order). Treatment was initially individual and subsequently conjoined with his wife. Dr. X judged the treatment to be successful and termination of therapy to be appropriate in April 2009. He opined, "Dr. Gorman has a good understanding of the reasons for his difficulties with good control in the management of his practice which he has successfully resumed. It is hard to imagine that his difficulties would be repeated." Dr. X supported the elimination of restrictions on Dr. Gorman’s scope of practice and of the requirement for mandatory supervision.

Dr. Y acted as Dr. Gorman's practice supervisor from its resumption in April 2008, and also supervised his practice from June 2005 to March 2006 while Dr. Gorman was under a s.37 Order. In October 2009, Dr. Y retired. His report, dated July 16, 2010, refers to the period of his supervision. He commented that Dr. Gorman developed, during the period of his psychotherapy, considerable insight into the issues that led to his erotic and narcissistic countertransferences. He noted Dr. Gorman's remorse over his previous breach of trust. He stated that Dr. Gorman had had eight to ten female patients attending once or twice weekly in psychotherapy and that no major transference or countertransference issues had arisen that could not be handled therapeutically. He reported that he had been in contact with the hospital where Dr. Gorman provided crisis intervention and that the hospital was pleased with his professional performance and had received no negative reports concerning his functioning.

Dr. Z took over supervision of Dr. Gorman's practice at the time of Dr. Y's retirement. He reported on July 20, 2010, that he had been supervising Dr. Gorman at a frequency of every two weeks from October 2009 until April 2010, and at a monthly frequency thereafter. His supervision involved reviewing Dr. Gorman's work with female patients in his private office practice as well as reviewing, every six months, the charts of ten randomly chosen female patients in Dr. Gorman's hospital practice. He commented that he had reviewed the notes of 38 female patients currently under Dr. Gorman's care focusing on issues of boundary maintenance and transference/countertransference management. He opined that Dr. Gorman had demonstrated competence in those matters, despite being exposed to patients who could potentially cause problems in such areas. He expressed total satisfaction with Dr. Gorman's work and opined that his future potential for sexual abuse is negligible. He did not feel that continued monitoring of Dr. Gorman's hospital practice would serve any useful purpose.

In a supplementary report dated March 26, 2011, Dr. Z reported on his continued monthly supervision of Dr. Gorman's practice. He had discussed a total of 48 patients with Dr. Gorman and opined that he continued to demonstrate careful and competent management of transference/countertransference matters with appropriate maintenance of professional boundaries. In Dr. Z’s opinion, Dr. Gorman "is ready to terminate the regular supervision of his practice with female patients." He opined that Dr. Gorman would benefit from consultation, on a case-by-case basis, for patients when the need arises, as would all practicing psychotherapists.

Counsel for Dr. Gorman submitted that he has complied with the prohibition on performing psychoanalysis, as well as all other provisions of the 2007 Order. His personal progress under psychotherapy, as well as the absence of complicating factors (such as the shocking death of his daughter), make the probability of re-offense sufficiently low that continued supervision is, in her submission, unnecessary. She recognized and submitted that the onus is on the applicant to establish conditions suitable to justify a variance from the 2007 Order.

Counsel for the College took no position with respect to the motion but did make submissions with respect to the law. She provided two previous decisions of the Discipline Committee on motions to vary prior orders, both of which, the Committee noted, were brought after a longer period of compliance than that of Dr. Gorman in this case. Counsel for the College submitted

that the onus is on the moving party to establish a change in circumstances such that it would be in the public interest to grant the motion. She further submitted that the mere passage of time and the absence of problems are insufficient to justify a variance.

Independent legal counsel advised that the parties were in essential agreement on the onus of proof and the test to be applied. He advised that the onus is on the applicant member to demonstrate on the balance of probabilities that a change of circumstances has occurred, such that it would be in the public interest to vary the 2007 Order.

DECISION AND REASONS FOR DECISION

The Committee accepted the evidence in the reports filed that Dr. Gorman had demonstrated insight into his past behaviour, which is a change in circumstances that may justify the variance from the 2007 Order. The Committee decided that the alternative relief sought in the motion, to exclude Dr. Gorman's hospital practice from supervision, and to reduce the frequency of supervision of his office practice to quarterly, should be granted.

The Committee concluded that Dr. Gorman's hospital practice, which involves brief (72 hour) crisis intervention, would be a highly improbable setting for countertransference to occur. The Committee agrees with Dr. Z that continued monitoring of his hospital practice would serve no useful purpose.

With respect to the supervision of Dr. Gorman's private practice, the Committee noted that the duration of supervision had been relatively brief by comparison to the similar cases provided. The Committee felt that a longer period of less intensive monitoring is in keeping with public protection, given the gravity of the initial offense. Consequently, the Committee declined to grant the variance sought to eliminate completely the supervision requirement for Dr. Gorman’s private practice, but rather agreed that its frequency should be reduced from monthly to quarterly. In all other respects, the 2007 Order remains in effect, including the prohibition on performing psychoanalysis.

ORDER

The Discipline Committee orders and directs that effective immediately paragraph 2 (ii) of the Order of the Discipline Committee of the College of Physicians and Surgeons dated March 26, 2007, be varied:

1. to exclude Dr. Gorman's hospital practice from the scope of supervision; and

2. to reduce the frequency of private practice supervision, as specified in paragraph 2 (ii) of the 2007 Order, to four times a year (quarterly) rather than monthly.

Indexed as: Gorman, R. (Re)

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

DR. R. MACKENZIE (CHAIR)	)	Hearing Date: June 28, 2013
D. DOHERTY	)	Decision Date: June 28, 2013
DR. K. BRACKEN	)	Release of Written Reasons: September 16, 2013

B E T W E E N:

DR. RICHARD GORMAN

(Moving Party)

- and -

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

(Responding Party)

REASONS FOR ORDER
(On a Motion to Vary the Order of the Discipline Committee of March 26, 2007)

INTRODUCTION

On June 28, 2013, the Discipline Committee heard a motion brought by Dr. Gorman for an Order varying a term, condition and limitation imposed on his certificate of registration pursuant to a previous Order of the Discipline Committee.

In his Notice of Motion, the member sought an Order eliminating the supervision requirement contained in paragraph 2(ii) of the March 26, 2007 Order of the Discipline Committee (the "2007 Order"), as varied by the Order of the Discipline Committee dated June 8, 2011 (the "2011 Order"), which reduced the frequency of supervision from monthly to quarterly.

The Committee considered the materials in the Motion Record of Dr. Gorman, as well as additional exhibits that were filed at the hearing. The Committee also heard the submissions of counsel for Dr. Gorman. Counsel for the College took no position with respect to the motion, but made submissions on the applicable law. On June 28, 2013, the Committee granted the Order that Dr. Gorman requested, with written reasons to follow.

BACKGROUND

On March 26, 2007, the Discipline Committee made a finding that Dr. Gorman committed acts of professional misconduct:

1. in that he engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional; and

2. in that he engaged in sexual abuse of a patient.

The allegations concerned a single female patient. Dr. Gorman admitted some of the facts alleged against him, acknowledging that these constituted professional misconduct, including sexual abuse of a patient, as alleged in the Notice of Hearing. He disputed other facts alleged against him. The Committee found most of the allegations to have been proven to the requisite standard.

On the matter of penalty, the Committee ordered and directed that:

1. the Registrar suspend Dr. Gorman's certificate of registration for twenty-four (24) months to begin two (2) weeks from the date of the order. Twelve (12) months of the suspension were to be suspended if Dr. Gorman successfully completed an ethics course acceptable to the College and continued in psychotherapy with a therapist acceptable to the College for as long as the therapist deemed necessary, but not to be less than two years.

2. The Registrar impose the following terms, conditions and limitations on Dr. Gorman's certificate of registration:

    i. Dr. Gorman is restricted from doing psychoanalysis.

    ii. Dr. Gorman's practice in psychotherapy and psychodynamics, with regard to female patients, be supervised at Dr. Gorman's expense by a supervisor acceptable to the College and who has read the decision of the Discipline Committee. The supervisor will sign an undertaking acceptable to the College to meet with Dr. Gorman and review the cases of all female patients every two (2) weeks. After two (2) years, the frequency of the meetings may be reduced to one (1) per month if deemed acceptable by the College following the report of the supervisor. The supervisor will report in writing to the College every six (6) months on the state of Dr. Gorman's practice as regards female patients.

    iii. Dr. Gorman continue in psychotherapy with a therapist acceptable to the College for not less than two (2) years and thereafter as long as the therapist deems necessary. The therapist, who has read the decision of the Discipline Committee, will sign an undertaking acceptable to the College to act as Dr. Gorman's therapist

3. Dr. Gorman attend before the Committee to be reprimanded on a date to be fixed by the panel no later than three (3) months from the date the order became final.

4. Dr. Gorman pay a fine of $15,000 to the Treasurer of Ontario within one (1) month of the date the order became final.

5. Any future request for variation from the Order was to be brought before the Discipline Committee.

6. The parties may deliver written submissions with respect to costs within twenty-one (21) days from the date of the decision.

FIRST MOTION TO VARY

On May 2, 2011, the Committee heard a motion brought by Dr. Gorman for an Order seeking to vary terms, conditions and limitations imposed on his certificate of registration pursuant to the 2007 Order. The motion sought:

1. an Order eliminating the supervision requirement contained in paragraph 2(ii) of the 2007 Order, as of April 9, 2011; or

2. in the alternative, an Order varying paragraph 2(ii) of the supervision term of the 2007 Order to exclude Dr. Gorman's hospital practice from the scope of supervision immediately; and

3. an Order reducing the frequency of private practice supervision as specified in paragraph 2(ii) of the 2007 Order to four times a year (quarterly) rather than monthly.

Three reports were tendered in evidence in support of the 2011 motion, one from Dr. Gorman's treating psychiatrist and two from his practice supervisors. In its Order and Reasons for Order dated June 8, 2011, the Committee accepted the evidence in the reports that Dr. Gorman had demonstrated insight into his past behaviour, and that this was a change in circumstances that may justify the variance from the 2007 Order. The Committee decided to grant the alternative relief sought in the motion: it ordered that effective immediately, paragraph 2(ii) of the 2007 Order be varied to exclude Dr. Gorman's hospital practice from the scope of supervision, and to reduce the frequency of supervision of his office practice to quarterly from monthly. The Committee was not prepared at that time to completely eliminate the supervision requirement as it had been relatively brief in comparison to other cases. The Committee felt that a longer period of less intensive monitoring was in keeping with public protection given the gravity of the initial offence.

EVIDENCE AND FINDINGS ON THE CURRENT MOTION TO VARY

The Motion Record filed by Dr. Gorman included the final report of his initial practice supervisor, Dr. Y, dated July 16, 2010. It also contained reports from his current practice supervisor, Dr. Z, dated July 20, 2010, March 26, 2011 and October 1, 2012. At the hearing, Dr. Gorman tendered three additional reports from Dr. Z, dated October 7, 2011, April 9, 2012 and April 6, 2013.

All of these reports are exceedingly positive. As early as July 20, 2010, Dr. Z expressed the view that the supervision and monitoring of Dr. Gorman's practice with female patients could be terminated as of three years from his return to practice (which had been in April 2008). In his more recent reports dated March 26, 2011 and October 1, 2012, Dr. Z reiterated that he believed that Dr. Gorman was ready to terminate the regular supervision of his practice with female patients.

Dr. Gorman has fulfilled all of the obligations of the 2007 Order. During the over five years of his supervised practice, there have been no issues arising with respect to his clinical care or competence. His original practice supervisor, Dr. Y, reported that Dr. Gorman has developed considerable insight into the issues that led to his erotic and narcissistic countertransferences, and that he continues to be remorseful about his previous breach of trust. Dr. Y and Dr. Z agree that Dr. Gorman is aware of the potential pitfalls when treating female patients in psychodynamic psychotherapy, and is carefully managing any counter-transference issues in an appropriate manner.

Although there is no express authority in the Health Professions Procedural Code for the Committee to vary an Order made by a previous panel of the Committee, case law has established that it is inherent in the powers of the Committee to make such an order where appropriate. Also, the Committee has a specific rule in place, Rule 16.01, which allows a party to move before the Committee to have an order varied, suspended or cancelled, on the grounds of facts arising or discovered after the order was made The 2007 Order expressly contemplated that requests for variation of the Order could be brought before the Committee. The onus is on the moving party to show that a change of

circumstances has occurred such that it would be in the public interest for the terms, conditions and limitations to be varied. The standard of proof is on the balance of probabilities.

Some of the factors that previous panels of the Committee have considered in deciding whether the test for a variation has been met include whether the physician has demonstrated insight into his behavior and remorse for his misconduct; whether he has complied with all the terms, conditions and limitations of the discipline order to date; whether he has made changes in his practice to mitigate future risk; whether there have been any other concerns with the physician's care, competence and behaviour since returning to practice; and, finally, whether the original order contemplated a future lifting of the imposed restrictions in the event of a change of circumstances.

In this case, Dr. Gorman has complied fully with all aspects of the 2007 Order, as varied in 2011. He has undergone over two years of further supervision since the 2011 Order. His practice supervisors report favourably on him, and are of the opinion that he no longer requires supervision. He has demonstrated insight into his past behavior, and care and competence in his treatment of female patients. He is at very low risk to reoffend. As noted above, the 2007 Order expressly contemplated that requests for variations of the Order could be brought before the Committee.

Accordingly, the Committee concluded that Dr. Gorman has met the necessary burden of proof that there has been a change in his circumstances such that ongoing clinical supervision of his private practice is no longer required in order to protect the public interest.

The Committee was provided with three prior cases of motions to vary: Dr. Wesley (2008), Dr. Doyle (2012) and Dr. Kingstone (2012). The Committee was satisfied that the disposition in those cases supported its decision in this case.

The Committee therefore ordered and directed on June 28, 2013, that, effective immediately, paragraph 2(ii) of the 2007 Order, as varied by the 2011 Order, be varied to eliminate the supervision requirement contained therein.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Richard Frederick Gorman, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name or any information that could identify the complainant under subsection 47 of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

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

> Every person who contravenes an order made under section 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: Gorman, R. (Re)

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

DR. W. KING (CHAIR)	)	Hearing Date: June 5, 2014
S. BERI	)	Decision Date: June 5, 2014
DR. P. POLDRE	)	Release of Written Reasons: July 29, 2014

B E T W E E N:

DR. RICHARD GORMAN

(Moving Party)

- and -

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

(Responding Party)

ORDER AND REASONS FOR ORDER
(On a Motion to Vary the Order of the Discipline Committee of March 26, 2007)

THE MOTION

On June 5, 2014, the Discipline Committee heard a motion brought by Dr. Gorman for an Order varying a term, condition and limitation imposed on his certificate of registration pursuant to a previous Order of the Discipline Committee.

The member sought an Order that the Registrar remove the term, condition and limitation on Dr. Gorman's certificate of registration that he be restricted from doing psychoanalysis, as specified in paragraph 2(i) of the March 26, 2007 Order of the Discipline Committee (the "2007 Order"); varied by the Order of the Discipline Committee dated June 8, 2011 (the "2011 Order"), which reduced the frequency of supervision from monthly to quarterly; and varied subsequently by the Order of the Discipline Committee dated June 28, 2013 (the "2013 Order"), which eliminated the supervision requirement contained therein.

The Committee considered the written materials and heard the submissions of counsel for Dr. Gorman and counsel for the College. The College did not oppose the motion. On June 5, 2014, the Committee granted the Order as requested, with written reasons to follow.

BACKGROUND

On March 26, 2007, the Discipline Committee made a finding that Dr. Gorman committed acts of professional misconduct:

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

The allegations concerned one female patient. At the original hearing, Dr. Gorman admitted some of the facts alleged against him, and acknowledged that these constituted professional misconduct, including sexual abuse of a patient, as alleged in the Notice of Hearing. He disputed other facts alleged against him. The Committee found most of the allegations to have been proven.

On the matter of penalty, the Committee ordered and directed that:

1. the Registrar suspend Dr. Gorman's certificate of registration for twenty-four (24) months to begin two (2) weeks from the date of the order. Twelve (12) months of the suspension were to be suspended if Dr. Gorman successfully completed an ethics course acceptable to the College and continued in psychotherapy with a therapist acceptable to the College for as long as the therapist deemed necessary, but not to be less than two years.

2. The Registrar impose the following terms, conditions and limitations on Dr. Gorman's certificate of registration:

i. Dr. Gorman is restricted from doing psychoanalysis.

ii. Dr. Gorman's practice in psychotherapy and psychodynamics, with regard to female patients, be supervised at Dr. Gorman's expense by a supervisor acceptable to the College and who has read the decision of the Discipline Committee. The supervisor will sign an undertaking acceptable to the College to meet with Dr. Gorman and review the cases of all female patients every two (2) weeks. After two (2) years, the frequency of the meetings may be reduced to one (1) per month if deemed acceptable by the College following the report of the supervisor. The supervisor will report in writing to the College every six (6) months on the state of Dr. Gorman's practice as regards female patients.

iii. Dr. Gorman continue in psychotherapy with a therapist acceptable to the College for not less than two (2) years and thereafter as long as the therapist deems necessary. The therapist, who has read the decision of the Discipline Committee, will sign an undertaking acceptable to the College to act as Dr. Gorman's therapist.

3. Dr. Gorman attend before the Committee to be reprimanded on a date to be fixed by the panel no later than three (3) months from the date the order became final.

4. Dr. Gorman pay a fine of $15,000 to the Treasurer of Ontario within one (1) month of the date the order became final.

5. Any future request for variation from the Order was to be brought before the Discipline Committee.

6. The parties may deliver written submissions with respect to costs within twenty-one (21) days from the date of the decision.

FIRST MOTION TO VARY

On May 2, 2011, the Committee heard a motion brought by Dr. Gorman for an Order seeking to vary terms, conditions and limitations imposed on his certificate of registration pursuant to the 2007 Order. The motion sought:

1. an Order eliminating the supervision requirement contained in paragraph 2(ii) of the 2007 Order, as of April 9, 2011; or

2. in the alternative, an Order varying paragraph 2(ii) of the supervision term of the 2007 Order to exclude Dr. Gorman's hospital practice from the scope of supervision immediately; and

3. an Order reducing the frequency of private practice supervision as specified in paragraph 2(ii) of the 2007 Order to four times a year (quarterly) rather than monthly.

Three reports were tendered in evidence in support of the 2011 motion, one from Dr. Gorman's treating psychiatrist and two from his practice supervisors. In its Order and Reasons for Order dated June 8, 2011, the Committee accepted the evidence in the reports that Dr. Gorman had demonstrated insight into his past behaviour, and that this was a change in circumstances that may justify the variance from the 2007 Order. The Committee decided to grant the alternative relief sought in the motion: it ordered that effective immediately, paragraph 2(ii) of the 2007 Order be varied to exclude Dr. Gorman's hospital practice from the scope of supervision, and to reduce the frequency of supervision of his office practice to quarterly from monthly. The Committee was not prepared at that time to completely eliminate the supervision requirement as it had been relatively brief in comparison to other cases. The Committee felt that a longer period of less intensive monitoring was in keeping with public protection given the gravity of the initial offence.

SECOND MOTION TO VARY

On June 28, 2013, the Committee heard a motion brought by Dr. Gorman for an Order seeking to vary terms, conditions and limitations imposed on his certificate of registration pursuant to the 2007 Order. The motion sought that:

1. paragraph 2(ii) of the 2007 Order, as varied by the 2011 Order, be varied to eliminate the supervision requirement contained therein.

The Committee was provided with the final report of Dr. Gorman's initial practice supervisor and six reports from his current practice supervisor. All of the reports were exceedingly positive and concluded that Dr. Gorman was ready to terminate the regular supervision of his practice with female patients. Both supervisors reported that Dr. Gorman was aware of the potential pitfalls when treating female patients in psychodynamic psychotherapy, and that he was carefully managing any counter-transference issues in an appropriate manner. The Committee reviewed the factors that have been considered in deciding whether the test for a variation had been met. The Committee concluded that Dr. Gorman had demonstrated insight into his past behaviour, that he had complied fully with all aspects of the 2007 Order, as varied in 2011, that his supervisors' reports were favourable, and that he demonstrated care and competence in his treatment of female patients. The Committee decided to grant the motion to vary. It ordered that paragraph 2(ii) of the 2007 Order, as varied by the 2011 Order, be eliminated.

CURRENT MOTION TO VARY

The Motion Record filed by Dr. Gorman contained the 2007 Order, the 2011 Order, the 2013 Order, the eight reports of Dr. Z (October 25, 2009 to July 26, 2013), the six reports of Dr. Y (July 19, 2005 to July 16, 2010), the four reports of Dr. X (June 15, 2006 to July 25, 2013), the Curriculum Vitae of Dr. V and the Report of Dr. V dated November 14, 2013.

Dr. V was noted to be a Past President of the Canadian Psychoanalytic Society and the Past Director of the Canadian Institute of Psychoanalysis. He is the founding chairperson of the committee that developed The Psychoanalytic Code of Ethics. He has chaired the Ethics Committees of both the Toronto and the Canadian Psychoanalytic Societies. He has practiced psychoanalysis for over 30 years and is currently a Training and Supervising Psychoanalyst at the Toronto Psychoanalytic Society.

Dr. V conducted an extensive document review of Dr. Gorman's case. This included the complete clinical record of the patient, and the reports cited above that are part of the

Motion Record. Furthermore, Dr. V had telephone discussions with Drs. Y and Z, and a personal discussion with Dr. W (who had provided an opinion in 2006 concerning boundary violations). Dr. V also interviewed Dr. Gorman in the office where he conducts his practice.

Dr. V's report noted that at the time relevant to the original finding Dr. Gorman had suffered a catastrophic event in his life with the illness and subsequent death of his daughter. He indicated that a catastrophic event is a common risk factor among psychoanalysts who otherwise have unblemished records. Dr. V noted that the penalty imposed by the Discipline Committee recognized that Dr. Gorman was not a predatory or repeat offender and was amenable to rehabilitation. He noted that Dr. Gorman has demonstrated a commitment to self-improvement as evident in the supervisors' reports over the years. He noted that Dr. Gorman remains remorseful and feels badly about the harmful consequences to his former patient and is ashamed of the harm his conduct caused her. Dr. V found Dr. Gorman to be very self-reflective, open and sincere. Furthermore, Dr. Gorman is currently practicing intensive psychotherapy with female patients, which is psychoanalytically informed. He clarifies to his patients that he cannot provide psychoanalysis at this time. Dr. V noted that Dr. Gorman is undoubtedly exposed to and managing erotic transference. Dr. V concluded that Dr. Gorman's current work is barely distinguishable from psychoanalysis, especially when conducted by someone who is trained as a psychoanalyst. Dr. V also reported that Dr. Gorman's re-instatement to the Toronto Psychoanalytic Society would allow him easier access to the support and supervision that is enjoyed by all members through The Psychoanalyst Assistance Committee. Dr. V's report concluded that Dr. Gorman is capable of resuming a psychoanalytic practice.

In keeping with the College Policy on Re-entering Practice (Policy Statement #2-08) , an Individualized Education Plan has been created for Dr. Gorman, as outlined in Schedule "A". The plan seeks to review, refresh and enhance Dr. Gorman's psychoanalytic skills and techniques via quarterly meetings with a supervisor, who will review the care of two female psychoanalysis patients, ensure that transference and counter-transference are

properly handled, advise regarding educational readings and assess whether further supervision is required after one year (commencing upon seeing the first patient in psychoanalysis).

DECISION AND REASONS FOR DECISION

Rule 16.01 of the Rules of the Discipline Committee provides that a party may make a motion to the Discipline Committee to have an order varied, suspended, or cancelled, on the grounds of facts arising or discovered after the order was made. The onus is on the moving party to show a change of circumstances has occurred such that it would be in the public interest for the terms, conditions and limitations to be varied. The standard of proof is on a balance of probabilities. The Committee concluded that Dr. Gorman had satisfied this test.

The Committee noted Dr. Gorman's full compliance with all previous restrictions and the well-documented evidence of continued commitment to self-improvement by his practice supervisors. The Committee found Dr. V's opinion compelling in two main regards. First, Dr. V noted the significant similarity between the intensive psychotherapy that Dr. Gorman is currently providing and psychoanalysis (which he is currently restricted from providing). Second, Dr. V's report outlines the future positive benefits of Dr. Gorman's re-instatement to the Toronto Psychoanalytic Society, including ongoing opportunities for personal support and education.

The Committee reviewed the Individualized Education Plan (IEP) and found it to be carefully crafted so as to provide protection to the public by providing supervision of the first two psychoanalysis patients. The IEP also provides for an opportunity to extend the period of supervision if warranted.

For these reasons the Committee granted the Order that the Registrar remove the term, condition and limitation on Dr. Gorman's certificate of registration that he be restricted

from doing psychoanalysis contained in paragraph 2(i) of the March 26, 2007 Order of the Discipline Committee.

ORDER

The Committee therefore ordered and directed on June 5, 2014:

1. that the Registrar remove the term, condition and limitation on Dr. Gorman's certificate of registration that he be restricted from doing psychoanalysis.

2. that the Registrar impose the following terms, conditions and limitations on Dr. Gorman's certificate of registration:

    (i) Dr. Gorman shall comply with the College Policy on Re-entering Practice (Policy Statement #2-08) with respect to his engagement in psychoanalysis and will abide by the College's plan for re-entry, attached as Schedule "A" to this Order, which incorporates the following components:

        a. Under the supervision of a supervisor, who is to be approved by the College, Dr. Gorman shall treat two (2) female patients for psychoanalysis;
        b. the supervisor shall report to the College after the first month of Dr. Gorman seeing a patient for psychoanalysis and then quarterly thereafter for the duration of the supervisory relationship. Supervision will take place, initially, for one year, after which time the College, in consultation with the supervisor, shall determine whether additional supervision is required;
        c. 12 months after commencing treatment of the first psychoanalytic patient, Dr. Gorman shall undergo an assessment of his practice and abide by any recommendations made by the assessor. If any recommendations made by the assessor constitute terms, conditions or limitations on Dr. Gorman's certificate of registration, such terms,

conditions or limitations will be imposed on Dr. Gorman's certificate of registration and appear on the public register; and

(ii) Dr. Gorman shall pay all of the costs of the clinical supervision and practice assessment associated with this re-entry to practice program in relation to his engagement in a psychoanalysis practice.