

Indexed as Abouelnasr (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. WAHID ALY ABOUELNASR

PANEL MEMBERS:

**DR. M. GABEL
E. COLLINS
DR. W. KING
J. ASHMAN
DR. L. THURLING**

Hearing Date: November 8, 2006
Decision Date: November 8, 2006
Release of Written Reasons Date: December 5, 2006

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on November 8, 2006. At the conclusion of the hearing, the Committee stated its finding that Dr. Abouelnasr committed acts of professional misconduct and delivered its penalty order with written reasons to follow.

THE ALLEGATIONS

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

1. under paragraph 51(1)(b.1) of the Health Professions Procedural Code (the “Code”) which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, as amended, in that he engaged in the sexual abuse of a patient; and
2. 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.

RESPONSE TO THE ALLEGATIONS

Dr. Abouelnasr entered a plea of no contest to allegation #2 as set out in the Notice of Hearing. Counsel for the College withdrew allegation #1.

Rule 3.02(1) of the Rules of Procedure of the Discipline Committee states:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of the proceeding only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of the proceeding only; and

- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

FACTS AND EVIDENCE

The following Statement of Facts was filed as an exhibit and presented to the Committee:

1. Dr. Wahid Abouelnasr (“Dr. Abouelnasr”) is a licensed psychiatrist who has been practising psychiatry since 1996.
2. The complainant lives in the United States of America. Dr. Abouelnasr patronized a travel agency owned by the complainant’s husband, and first began contact with the complainant in late 1999 or early 2000. Dr. Abouelnasr and his wife became friendly with the complainant and her husband. At some point, Dr. Abouelnasr and the complainant began a sexual relationship, which included sexual intercourse, which ended in May 2004.
3. Although there was never a doctor-patient relationship between Dr. Abouelnasr and the complainant, at various times, including during the sexual relationship, Dr. Abouelnasr provided incidental medical treatment to the complainant, as follows:
 - (a) providing three prescriptions for the complainant;
 - (b) speaking three times with the complainant’s family physician in the United States; and
 - (c) receiving four lab reports provided to Dr. Abouelnasr by the complainant’s family physician.
4. Dr. Abouelnasr’s conduct referred to in paragraph 3 herein created a potential for confusion in the mind of the complainant as to whether Dr. Abouelnasr, in providing the incidental medical treatment, was acting in a personal or professional role.

5. After the complainant's husband discovered the sexual relationship, he confronted Dr. Abouelnasr on several occasions. During some of these confrontations, Dr. Abouelnasr misused his position as a physician to provide medical and diagnostic assertions about the complainant.
6. Dr. Abouelnasr also offered to prescribe medication to the complainant's husband in order to placate the complainant's husband and to otherwise manage the consequences of the sexual relationship to Dr. Abouelnasr's advantage.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Facts. Having regard to these uncontested facts, the Committee found that Dr. Abouelnasr committed acts of professional misconduct 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.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs. They jointly submitted that the Registrar should be directed to suspend Dr. Abouelnasr's certificate of registration for six months. The commencement date of the suspension was not agreed upon. Counsel for the College was seeking a starting date of December 1, 2006. Counsel for Dr. Abouelnasr requested a delay of the starting date to February 1, 2007 thus allowing the physician sufficient time to terminate or transfer care of patients, arrange for medications to be renewed and to attend to other professional duties. In addition to the suspension, it was jointly submitted that Dr. Abouelnasr should be ordered to pay to the College costs in the amount of \$1,250. The results of the proceeding would also be included in the register.

Counsel for the College presented one similar case as precedent to demonstrate the fairness of the penalty proposed. Defence counsel reminded the panel, by citing two appeal cases that the panel was obliged to accept the joint submission unless so doing

would jeopardize the public interest or bring the administration of justice into disrepute. The panel considered carefully the terms of the proposed penalty and accepted the joint submission for the following reasons.

The panel agreed that a six month suspension was appropriate in view of the seriousness of the conduct. Dr. Abouelnasr had violated the important boundary between physician and patient. He had provided incidental medical treatment to the complainant while engaged in an intimate sexual relationship with her. He had caused potential confusion because, although not her physician, he had assumed the role of physician by writing prescriptions for her and by communicating on clinical matters with her family doctor. As a psychiatrist, he would be expected to be particularly aware of the emotional vulnerability of patients and, thus, the potential for harm when proper professional boundaries are transgressed.

In accordance with the principles to be considered in determining the appropriate penalty, the public must be protected from further professional misconduct of this kind and the doctor must be deterred from such behaviour in the future. Stringent consequences serve also to express the abhorrence of the profession and deter other members from similar boundary violations.

The panel took very seriously the further misuse of the role of physician in Dr. Abouelnasr's subsequent dealings with the complainant's husband. When the sexual relationship was disclosed, he tried to manipulate the situation to his advantage by offering to prescribe medication to the husband although he was not his physician. He also made clinical assertions about the complainant's health to her husband. Such actions are a dishonourable misuse of the power of a physician whose specialized knowledge ought to be used only in the proper context of his professional role and not to further his personal interests.

Defence counsel presented and filed as exhibits Dr. Abouelnasr's *curriculum vitae* and letters from established colleagues attesting to his competence and professionalism. The panel did not consider these documents to be mitigating factors. Instead, it was the panel's opinion that, given his solid training, collegial supports and professional

resources, Dr. Abouelnasr should have had the insight and volition to correct the situation instead of allowing it to continue.

It remained with the panel to decide the timing of Dr. Abouelnasr's suspension. It was our view that Dr. Abouelnasr had been aware of his impending suspension, did not work in isolation, but in a clinic and hospital setting and, therefore, had resources available to provide proper coverage in his absence. Thus, it was ordered that the suspension should begin December 1, 2006.

Again, the panel considered the deterrent effect of the penalty for both this physician and for the profession generally. Unprofessional, dishonourable behaviour would result in regulatory sanctions, professional disgrace and the potential burdening of one's colleagues. The public interest in this case would be served as Dr. Abouelnasr's duties could be carried on by his colleagues in these settings.

In considering the costs to be assessed against Dr. Abouelnasr, the panel was aware that, in entering a plea of "no contest" to the allegations, the doctor had spared the College the expense of a long hearing at which the College would have to prove the allegations. Also, the complainant would not have to withstand the ordeal of testifying at such a proceeding.

The panel was also aware that a plea of "no contest" was not equivalent to an admission of guilt nor an expression of remorse.

The panel concluded that the proposed penalty would serve as a deterrent to the physician by suspending his certificate of registration and imposing costs. It would serve as warning to the profession in general that similar blurring of professional boundaries will not be tolerated. Importantly, the public would be protected and assured that the regulatory body has rules of professional conduct that will be rigorously enforced.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. Abouelnasr's certificate of registration for six months commencing December 1, 2006.
2. Dr. Abouelnasr pay to the College costs in the amount of \$1,250.00.
3. The results of this proceeding be included in the register.