

NOTICE OF PUBLICATION BAN

By its order of November 18, 2013, in the College of Physicians and Surgeons of Ontario and Dr. Jerry Tennen, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that could disclose the identity of the patients in the hearing under subsection 45(3) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also made an order to prohibit the publication of the name or identity of the complainant under subsection 47(1) of the *Code*.

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,

(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: Tennen, J. (Re)

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

IN THE MATTER OF a Hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code**
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. JERRY TENNEN

PANEL MEMBERS:

**DR. M. GABEL
D. GIAMPIETRI
DR. C. LEVITT
DR. E. ATTIA (Ph.D.)
DR. D. WALKER**

**Hearing Date: November 18, 2013
Decision Date: November 18, 2013
Release of Written Reasons: December 12, 2013**

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on November 18, 2013. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Tennen committed an act of professional misconduct:

1. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has failed to maintain the standard of practice of the profession;
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 omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
3. under clause 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”), in that he engaged in sexual abuse of a patient.

The Notice of Hearing also alleged that Dr. Tennen is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, (“the Code”).

RESPONSE TO THE ALLEGATIONS

Dr. Tennen admitted the first and second allegations of professional misconduct in the Notice of Hearing that he has failed to maintain the standard of practice of the profession, and that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. Counsel for the College withdrew the third allegation of professional misconduct and the allegation of incompetence.

FACTS AND EVIDENCE

The following facts were set out in a Statement of Agreed Facts and Admission that was filed as an exhibit and presented to the Committee:

FACTS

1. Dr. Tennen is a psychiatrist who at all material times had a private practice located in Toronto, Ontario.
2. Dr. Tennen obtained a Doctor of Medicine from the University of Toronto in 1968. He originally practiced as a family physician and later entered a psychiatry residency. He obtained his Royal College certification in psychiatry in 1981 and has been practising psychiatry in Ontario since that time.

Patient A

3. Dr. Tennen began treating Patient A in 1997. He provided psychotherapy to her for over two years, until Patient A terminated her therapy. At the time of treatment, Patient A was [in her 30's] and single.
4. On occasion during the two year period, Dr. Tennen ended his therapy sessions with Patient A by placing his arm around her shoulder or giving her a hug. Patient A states he also told her he liked the smell of her perfume, and Dr. Tennen

- recalls the scent of her perfume and possibly mentioning the fragrances she was wearing.
5. On July 16, 1999, when leaving his office, Dr. Tennen kissed Patient A on the lips. Patient A reports that he stated “mmm, you taste good”. Dr. Tennen does not recall if he made this statement but admits that it’s possible. The following week, Patient A states that Dr. Tennen began the therapy session by telling Patient A that she tasted good the previous week. Dr. Tennen does not recall making that comment.
 6. Patient A subsequently terminated the therapy.
 7. Dr. X was retained by the College of Physicians and Surgeons of Ontario (the "College") to provide an opinion on the care and treatment provided by Dr. Tennen to Patient A. [The first report of Dr. X is attached to the Statement of Agreed Facts as Schedule 1].
 8. Dr. X found that Dr. Tennen fell below the standard of practice of the profession by failing to maintain a proper frame for the psychotherapy treatment of Patient A, the clearest instance of which was when he kissed her on the lips. He also found that he displayed a deficiency in skill and judgment in the act of kissing the patient on the lips.
 9. Dr. X also noted that Dr. Tennen’s record keeping was “marginal” and there was no diagnostic formulation noted.

Patient B

9. Dr. Tennen began treating Patient B in 1997. She suffered from major depressive illness and chronic mood instability. He provided psychotherapy to Patient B for over eleven years, until Dr. Tennen terminated her therapy in 2009.
10. Towards the end of their therapeutic relationship in or around May 2008 and early 2009, Patient B displayed signs of erotic transference.
11. During their therapeutic relationship:

- a. Dr. Tennen exchanged brief hugs with Patient B;
 - b. Provided Patient B a kiss on the cheek
 - c. While Patient B was in the midst of an eroticized transference, Dr. Tennen asked her to see her surgical incision on her back. She lifted her shirt and he examined her scar.
12. Dr. X was retained by the College to provide an opinion on the care and treatment provided by Dr. Tennen to Patient B. [The second report of Dr. X is attached to the Statement of Agreed Facts as Schedule 2].
13. Dr. X found that Dr. Tennen failed to maintain the standard of practice of the profession in his treatment of Patient B by failing to maintain a proper frame for psychotherapy in light of the patient's eroticized transference. Dr. Tennen displayed a lack of skill and judgment in misjudging the impact of physical attention on this patient and in asking to see her surgical incision. He noted that focus on her body and examination of her body was contraindicated in the context of her eroticized transference.
14. Dr. X also noted that Dr. Tennen's documentation was marginal in that there was no clear formulation of his patient, particularly the clinical implications of her character structure.

ADMISSION

15. Dr. Tennen admits the facts as set out above and admits that:
- (a) the conduct described above constitutes acts or omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional;
 - (b) he failed to maintain the standard of practice of the profession; and,
 - (c) he engaged in professional misconduct under paragraph 1(1)2 and 33 of Ontario Regulation 856/93 made under the Medicine Act, 1991.

FINDINGS

The Committee accepted as true all of the facts set out in the Statement of Agreed Facts and Admission. Having regard to these facts, the Committee accepted Dr. Tennen's admission and found that he committed an act of professional misconduct, in that he has failed to maintain the standard of practice of the profession and in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order.

The Committee considered the joint submission on penalty in the context of the agreed facts and particular circumstances of this matter. The Committee considered the importance of public confidence in self-regulation, the protection of the public, both general and specific deterrence and the opportunity for the member's rehabilitation in assessing the appropriateness of the proposed penalty. The Committee was aware that a joint submission should be accepted unless to do so would be contrary to the public interest and bring the administration of justice into disrepute.

Dr. Tennen's transgressing of the sensitive boundaries of two vulnerable patients represents serious misconduct. Both Patient A and Patient B were dependent on Dr. Tennen for their psychiatric care, shared their most intimate and personal thoughts with him, and in the case of Patient B, did so over a long period of time in the context of a major depressive illness. Hugging, kissing, asking to view a surgical scar and the use of inappropriate comments in the face of what the College's expert described as a situation of eroticized transference constitutes serious professional misconduct. The management of transference in the psychotherapeutic setting is a fundamental skill of a psychiatrist and in this regard Dr. Tennen failed his patient and his profession.

In mitigation, the Committee noted that Dr. Tennen admitted his unacceptable behaviour as professional misconduct and in so doing spared his former patients having to testify and endure cross examination. This also reduced the cost to the College of a full hearing.

The Committee noted that the College's expert did identify some positive aspects of Dr. Tennen's care; that he was empathetic and caring. The expert acknowledged that Patient B in particular presented particularly challenging issues for a psychiatrist. In his reports filed with the Committee, the College expert expressed his opinion that Dr. Tennen did not pose a risk of harm to his patients.

Further, the Committee noted that Dr. Tennen had voluntarily completed a College sanctioned boundaries course at Western University and had had no previous findings of professional misconduct over a thirty year career.

It is the opinion of the Committee that both the boundaries course and the period of supervision and reassessment will provide significant opportunity for Dr. Tennen's rehabilitation, and with the reprimand and period of suspension will serve to protect the public.

Lastly, the Committee considered the five cases presented by counsel for the College in the Brief of Authorities and found the jointly proposed penalty to be consistent with these precedents.

Thus, after considering the particular facts in this case and the accepted principles in determining a penalty, the Committee accepted the joint submission on penalty which is enunciated in the Order below.

ORDER

Therefore, having stated its findings in paragraph 1 of its written order of November 18, 2013, the Committee ordered and directed, on the matter of penalty and costs, that:

2. Dr. Tennen attend before the panel to be reprimanded;
3. the Registrar suspend Dr. Tennen's certificate of registration for a period of three (3) months commencing December 1, 2013.
4. the Registrar impose the following terms, conditions and limitations on Dr. Tennen's certificate of registration:
 - a. Dr. Tennen shall, within 30 days from the date of this Order, retain a clinical supervisor, approved by the College, who shall sign the Undertaking in the form attached hereto as Schedule "A" (the "Clinical Supervisor"). Dr. Tennen shall meet with the Clinical Supervisor every two weeks to review the cases and charts of a minimum of three female patients with potential to experience, or actively, experiencing, transference in the course of treatment. Dr. Tennen shall abide by all recommendations of his Clinical Supervisor.
 - b. Following a twelve month period of supervision, Dr. Tennen shall undergo a reassessment of his practice by a College appointed assessor who shall report the results of the assessment to the College.
 - c. Dr. Tennen shall cooperate with unannounced inspections of his practice and patient charts by College representatives for the purposes of monitoring and enforcing compliance with the terms of this Order.
 - d. Dr. Tennen shall be responsible for any and all costs associated with implementing the terms of this Order.
5. Dr. Tennen pay costs in the amount of \$4,460.00 within thirty (30) days of the date of this Order.

At the conclusion of the hearing, Dr. Tennen waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.