

DECISION 2

Dr. Ajit Vargis
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ALLEGATIONS OF PROFESSIONAL MISCONDUCT

- Sexual abuse of a patient (para. 8)
- Disgraceful, dishonourable, unprofessional, unethical conduct (para. 59)

BRIEF SYNOPSIS OF FACTS

- The complainant was both a staff member and a patient;
- It was alleged that the member engaged in touching of a sexual nature and/or inappropriate touching in that the member touched and/or squeezed the patient’s breast and placed his hand on her stomach;
- The panel found that when the two of them were alone in his dental office on the date in question, the member hugged the complainant from behind without her consent. This hug was unwanted and the member did this despite being told by the complainant not to touch her on a previous occasion when he placed his hands on her shoulders;
- The member’s version of events was that while turning around in the hallway he accidentally bumped into the complainant and unintentionally touched her breast when he raised his hands to brace himself;
- The complainant’s testimony was that while standing behind her, the member had given her a hug without her consent and placed one hand on her stomach and squeezed her breast with his other hand for a few seconds until she screamed;

DECISION

1. Finding

- The member pleaded not guilty to both allegations. He was found not guilty with respect to the first allegation (sexual abuse of a patient). He was found guilty with respect to the second allegation (disgraceful, dishonourable, unprofessional, unethical conduct).

2. Penalty

- Reprimand
- Suspension of certificate of registration for 1 month (June 14 – July 13, 2013)
- Course in Boundaries

3. Costs/Publication

- Costs awarded to the College in the amount of \$10,000
- Pursuant to the legislation, publication of this matter includes the member’s name and address

4. Panel’s Reasoning

Reasoning on Finding

- In consideration of all of the facts of the case, the panel concluded that the patient was the more credible witness and that generally her version of the incident should be accepted on the balance of probabilities, which is the legal test.
- The panel concluded that in these circumstances, the hug which he must have known was unwanted was disgraceful, dishonourable, unprofessional, unethical conduct.
- However, the panel did not conclude that the member’s conduct amounted to sexual abuse. In that regard, while the member’s hand may have come in contact with the patient’s breast, the panel was unable to conclude that this was a deliberate act.

Reasoning on Penalty

- The penalty was a joint submission.
- The panel accepted that the penalty proposed in the joint submission was within the appropriate range of penalty for professional misconduct of this nature and thus should be accepted, based on the following considerations:
- The member had a right to a full hearing and his exercise of that right should not be a reason to reject a joint submission on penalty and costs;
- The penalty satisfies the rationales of specific and general deterrence, rehabilitation of the member and protection of the public;
- The member has been practicing since 1998 and there have been no other complaints or findings of professional misconduct;
- The course in boundary issues aids in the rehabilitation of the member and the protection of the public;
- The terms of the order serve to ensure that the member does not practice while under suspension;
- The suspension for one month represents a significant financial penalty due to loss of income. In addition the panel believes that the cost order will serve as a specific deterrent to the member and will make other members of the profession aware that this behaviour carries a significant financial penalty;
- The reprimand is a specific deterrent to the member as it is a humiliating experience to be reprimanded by one’s peers;
- Publishing the results of the hearing on the College’s register ensures protection of the public and acts as a deterrent to both the member and the profession at large.