

PROVINCE OF NOVA SCOTIA)
COUNTY OF HALIFAX)

COPY

IN THE MATTER OF: The *Medical Act*, S.N.S. 1995-96, c.10,

-and-

IN THE MATTER OF: A Complaint of the College of Physicians and Surgeons of Nova Scotia against Dr. Bolarinwa Olutosin Oluwole, of Yarmouth, in the County of Yarmouth, Province of Nova Scotia.

HEARING COMMITTEE DECISION

Members of Hearing Committee: Wayne D. Cochrane, Q.C. (Committee Chair)
Allan Green, Q.C.
Dr. Heather Robertson
Dr. Michael Teehan
Dr. Celina White

Counsel: Melanie Comstock
for the College of Physicians and Surgeons of
Nova Scotia

W. Harry Thurlow
for Dr. Bolarinwa Olutosin Oluwole

Date of Hearing: September 25, 2012
Date of Decision: October 26, 2012
Decision: Settlement Agreement accepted.

INTRODUCTION

- 1) Three female patients accused a male psychiatrist, Dr. Bolarinwa Olutosin Oluwole, of professional misconduct, which included sexual misconduct. An Investigation Committee of the College of Physicians and Surgeons, constituted under the *Medical Act*, found evidence to support the complaints.
- 2) The Investigation Committee and Dr. Oluwole agreed to a Settlement Agreement which would mean, among other things, that the physician's licence to practice would be revoked. The Agreement cannot take effect unless it is approved by the Hearing Committee of the College.

ISSUE

- 3) There is one principal issue in this proceeding:

Does the Hearing Committee, exercising its responsibilities and authority under the Act, accept the proposed Settlement Agreement, as recommended by the Investigation Committee?

For reasons discussed below, the Hearing Committee, having reviewed the evidence and heard the oral submissions of Counsel for the parties, has decided to accept the Agreement.

FACTS

- 4) Dr. Oluwole, after graduating in medicine from Ibadan University in Nigeria, completed a residency in psychiatry in Ireland in 2006. In January of 2008, the College registered him in the Defined Register, a conditional form of registration which requires, among other things, that the physician have a sponsor approved by the Council of the College.
- 5) After the College issued Dr. Oluwole his defined licence to practice on January 3, 2008, he became a staff psychiatrist in the Yarmouth Regional Hospital.
- 6) In March 2010, his employment as staff psychiatrist at the Hospital ceased. In that month, two patients (identified in this decision only as A and B) filed complaints with the College. In September of 2011 (about a year and a half after Patients A and B filed their complaints), a third patient, Patient C, filed a complaint.
- 7) The acts alleged by the patients included acts of sexual misconduct by him with all three patients. With respect to Patients A and C, the acts of sexual misconduct included acts of sexual intercourse; with respect to Patient B, they did not.

8) On June 3, 2010, the sponsorship of his defined licence was withdrawn, and the College revoked his licence to practice medicine. Dr. Oluwole left Nova Scotia, and is now resident in Ontario.

9) On December 6, 2010, the Southwest District Health Authority (of which Yarmouth Regional Hospital is a part) supplied the College with an inventory of items found in Dr. Oluwole's desk in the hospital. The items found included condoms, sexual lubricant, and a greeting card.

10) They also included a CD of sexually explicit photographs of a woman. According to the oral submissions made to the Hearing Committee in the course of its hearing, the woman in the photographs is not Patient A, B, or C.

11) Some of the above-named items are consistent with the allegations made by one or another of the patients in their original complaints, or in the course of being interviewed by the Investigation Committee.

12) On August 20, 2012, after discussions between Investigation Committee "A" and Dr. Oluwole, Dr. Oluwole signed the Settlement Agreement which is attached to, and incorporated in, this Decision.

13) On September 19, it was signed by Counsel for the College; on September 20, it was signed by the Chair of Investigation Committee "A."

14) In signing the Agreement, Dr. Oluwole acknowledged the truth of the allegations of Patients A, B and C, as detailed in Section "C" (subsections 1-4) of the Agreement. The allegations refer to misconduct, sexual and otherwise. He also explicitly acknowledged that he agreed the allegations constitute professional misconduct.

15) Investigation Committee "A" and Dr. Oluwole have agreed to a disposition of this matter (Section "E" of the Agreement), as follows:

- Dr. Oluwole's licence to practice medicine is to be revoked and his name stricken from the Register;
- if Dr. Oluwole applies for reinstatement of his licence to practice, the content of the College's file concerning the investigation, and resolution, of the complaints of Patients A, B and C shall be available for review.

16) Investigation Committee "A" recommends to the Hearing Committee that it accept the Settlement Agreement.

17) The Hearing Committee's hearing in this matter, on September 25, 2012, was attended by Counsel for Dr. Oluwole and Counsel for the College, accompanied by the Registrar of the College, Dr. D. A. Grant. Patients A, B, and C were not in attendance, nor was Dr. Oluwole.

REVIEW AND ANALYSIS

18) In deciding whether to accept the Settlement Agreement proposed by Investigation Committee "A" and Dr. Oluwole, the Committee has had the benefit of oral submissions from Counsel for the College, and Counsel for Dr. Oluwole.

19) Counsel for the College, speaking on behalf of Investigation Committee "A," told the Hearing Committee that Dr. Oluwole's actions amounted to an "abuse" and a "betrayal" of his patients.

20) She referred the Hearing Committee to a document, dated December 2010, and published by the College. It is entitled, "Sexual Misconduct in the Physician-Patient Relationship."

21) All three patients, A, B and C, were current patients of Dr. Oluwole at the time of the sexual misconduct. With respect to current patients, the document says that:

...there are no circumstances in which sexualized conduct ... is acceptable.

22) The document then lists a "spectrum" of sexual misconduct, which, while not exhaustive, includes 13 separate items. The first item, at the lower end of the spectrum, is "voyeurism" (including inappropriate disrobing practices that do not respect a patient's privacy). The thirteenth item, at the upper end of the spectrum, is described as follows:

Physician-patient sex, whether consented to or initiated by the patient, and any conduct with a patient that is sexual or may be reasonably interpreted as sexual. Such activities may include, but are not limited to, the physician encouraging the patient to masturbate in the physician's presence, masturbation by the physician of himself or herself or the patient, and contact between the mouth, genitals, or anus of the physician and the mouth, genitals, or anus of the patient.

23) Two of the three patients (A and C) allege, and Dr. Oluwole admits, that he engaged in sexual intercourse with them. This falls within the definition of "physician-patient sex" quoted above. As such, the misconduct at is at the top of the spectrum of the 13 items.

24) The Hearing Committee notes that it has treated the December 2010 document simply as an item of evidence, and not as, in effect, a legislated code of conduct. The Committee has two reasons for this.

25) First, the document was, according to its date, published after the acts of sexual misconduct occurred.

26) Second, the document's status, as a guideline, or something more, is, in the judgment of the Committee, somewhat unclear. The College states on the first page of the document that "guidelines" are simply recommendations, while compliance with "policies" is mandatory. The front page clearly identifies the document as a "guideline," but page 4 (relied on by Counsel for the College) is entitled "Policy on Sexual Misconduct in the Physician-Patient Relationship" (emphasis added). As the present proceeding involves an agreed disposition by the College and the physician, the Committee sees no difficulty arising from any uncertainty as to the actual, or intended, significance of the document (i.e., as a guideline or policy), and the Committee makes no further comment upon it.

27) The Hearing Committee notes that all three patients further allege, and Dr. Oluwole admits, that he also engaged in acts of sexual misconduct other than sexual intercourse with them.

28) The Hearing Committee considers that Dr. Oluwole's misconduct is made still more egregious by the fact that he was, at the time of the sexual misconduct, engaged in psychiatric treatment of the three patients.

29) In that regard, the Hearing Committee sees one of its earlier decisions, *Re Hingley* (1999), as relevant. That case also involved a psychiatrist who had engaged in sexual conduct with current patients. In *Hingley*, the Committee said that the psychiatrist

...violated in the gravest manner the patient-psychiatrist relationship. He did it over a protracted period of time. He did it knowingly. He did it with two patients he knew were very vulnerable.

30) Apart from the fact that Dr. Oluwole's actions involved three patients, not two, the Hearing Committee considers that these words apply equally well in the present matter.

31) In the judgment of the Hearing Committee, Dr. Oluwole's actions were indeed (as Counsel for the College asserted), an abuse and a betrayal of his patients.

Penalty

32) The penalty proposed (revocation of his licence, and being struck from the Register) is, in essence, the most severe available under the *Medical Act*. The Hearing Committee agrees that, in the circumstances of the present proceeding, this is an appropriate outcome.

Disclosure of information

33) The Hearing Committee also notes, and agrees with, the requirement in s. E. 3.(b) of the Settlement Agreement that, if Dr. Oluwole should ever apply for reinstatement to practice medicine in Nova Scotia, the content of the College's file with respect to the investigation and resolution of the matters which are the subject of the Settlement Agreement will be available for review.

34) In the course of its hearing, the Hearing Committee enquired as to what information about this matter would be disclosed by the College to other Colleges elsewhere in Canada, and whether such disclosure would be done only on request. The Registrar of the College, Dr. Grant, told the Hearing Committee that the College has adopted a practice of providing appropriate notice to other Colleges, and intends to do so in the case of Dr. Oluwole.

Costs

35) The proposed Settlement Agreement contains no requirement that Dr. Oluwole pay any costs at all. The Hearing Committee agrees with this omission, and will briefly review why.

36) The *Act* confers on the Hearing Committee the power to order a physician to pay all, or some, of the costs incurred by the College in investigating and hearing a complaint: s. 67. Costs of this type can be a significant sum.

37) Submissions to the Hearing Committee indicated that the omission of any requirement for the payment of costs in the Settlement Agreement is due, in part, to the College's conclusion that Dr. Oluwole's circumstances are such that he would be unlikely to be able to make any significant contribution to them.

38) The Hearing Committee also notes other factors which it sees as consistent (in the particular circumstances of this proceeding) with omitting a requirement for costs. Dr. Oluwole, by admitting the matters complained of, and signing the Settlement Agreement, avoided any need for a full hearing on the merits of the complaint.

39) This eliminated a further burden on the College and its staff in administering those proceedings.

40) Of at least equal or greater importance, it also eliminated any need for Patients A, B, and C to testify at a hearing.

FINDING: ACCEPTANCE OF SETTLEMENT AGREEMENT

41) The Hearing Committee has considered the submissions of Counsel, and the evidence before it, including the Settlement Agreement. Pursuant to s. 67 of the *Act*, the Hearing Committee has determined it should accept the Settlement Agreement recommended by Investigation Committee "A."

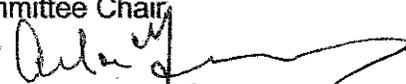
42) By this written decision, the Hearing Committee confirms its acceptance of the Settlement Agreement, which is attached to, and incorporated in, this decision.

DATED at Halifax, this ^{26th} ~~26~~ day of October, 2012.

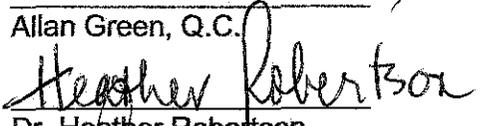


Wayne D. Cochrane, Q.C.

Committee Chair



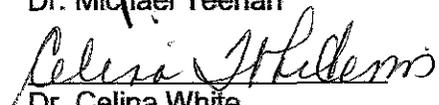
Allan Green, Q.C.



Dr. Heather Robertson



Dr. Michael Teehan



Dr. Celina White

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

IN THE MATTER OF: The *Medical Act*, R.S.N.S. 1995-96, c.10

-and-

IN THE MATTER OF: The *Canada Evidence Act*, R.S.C. 1985, c. C-5

-and-

IN THE MATTER OF: Dr. BOLARINWA OLUTOSIN OLUWOLE

SETTLEMENT AGREEMENT

1. Dr. Bolarinwa Oluwale, ("Dr. Oluwale"), a medical practitioner in the Province of Nova Scotia, and a member of the College of Physicians and Surgeons of the Province of Nova Scotia (the "College") at the time of the subject of the complaints described below, on the basis of the protections afforded to him under s.5(2) of the *Canada Evidence Act*, R.S.C. 1985, c. C-5, hereby agrees with and consents to the following in accordance with the provisions of the *Medical Act*, R.S.N.S. 1995-96, c.10.

A. BACKGROUND INFORMATION

2. Dr. Oluwale received his medical degree from the University of Ibadan, Nigeria in 1999 and completed his post-graduate medical training in Nigeria (Internship from March 1999 to May 2000) and Ireland (residency training in Psychiatry from March 2003 to December 2006). He obtained his FRCPC in Psychiatry in 2011.
3. Dr. Oluwale was issued a defined licence by the College of Physicians and Surgeons of Nova Scotia for the period January 3, 2008 until June 10, 2010 when sponsorship by the Southwest Nova Health Authority was withdrawn. He practiced as a staff psychiatrist at Yarmouth Regional Hospital beginning in January 2008 continuing until March, 2010.
4. The sponsorship of his defined licence was withdrawn on June 10, 2010 and he has not had a licence to practice medicine in Nova Scotia since that date.

B. COMPLAINTS

5. On March 1, 2010, **Patient A** filed a complaint with the College.
6. She stated she was a patient seeking help for issues with depression and suicidal thoughts. She claimed Dr. Oluwale took advantage of her by engaging in hugging, kissing and touching that led to sexual intercourse.

7. When interviewed on December 7, 2010 by Investigation Committee A of the College of Physicians and Surgeons, Patient A also alleged that she and Dr. Oluwole exchanged text messages of a sexual nature and gifts.
8. Following a full investigation of the complaint, including the consideration of Dr. Oluwole's response, Investigation Committee A referred the matter to a Hearing Committee.
9. On March 9, 2010, **Patient B** filed a complaint with the College.
10. Patient B stated that on more than one occasion when being treated as a patient, Dr. Oluwole attempted to hug her, commented on her appearance and touched her on the knee. She stated she was a patient seeking help for seasonal depression and relationship issues. Her first appointment was in September 2009.
11. Following a full investigation of the complaint, including the consideration of Dr. Oluwole's response, Investigation Committee A referred the matter to a Hearing Committee.
12. On September 2, 2011, **Patient C** filed a complaint with the College.
13. Patient C stated that she was a patient seeking help for issues with depression and anxiety. She was treated by Dr. Oluwole between November 9, 2009 and February 22, 2010. She claimed Dr. Oluwole hugged, touched and fondled her leading to sexual intercourse during their appointments. She stated that he gave her a nickname and gave her a greeting card.
14. Following a full investigation of the complaint, including the consideration of Dr. Oluwole's response, Investigation Committee A referred the matter to a Hearing Committee.
15. On December 6, 2010 the College was provided with a letter from South West Health detailing the inventory of Dr Oluwole's desk contents. The desk contents included patient prescription medication, condoms, lubricant gel, greeting cards, a letter and a CD with sexually explicit photographs of a woman.

C. NOTICE OF HEARING

1. The following allegations have been referred to the Hearing Committee by the Investigation Committee:
 1. With respect to patient A Dr. Oluwole violated patient/physician boundaries by:
 - (a) Engaging in acts of sexual misconduct including one or more of the following:
 - (i) inappropriate body contact;
 - (ii) kissing;
 - (iii) hugging;
 - (iv) sexual intercourse;
 - (v) sexual comments about the patient's body; and
 - (vi) exchange of sexually explicit e-mail and text messages.
 - (b) Exchanging gifts.

2. With respect to patient B Dr. Oluwole violated patient/physician boundaries by:

(a) Engaging in acts of sexual misconduct including one or more of the following:

- (i) inappropriate comments; and
- (ii) inappropriate body contact.

3. With respect to patient C Dr. Oluwole violated patient/physician boundaries by:

(a) Engaging in acts of sexual misconduct including one or more of the following:

- (i) inappropriate body contact;
- (ii) kissing;
- (iii) hugging; and
- (iv) sexual intercourse.

(b) Becoming overly familiar with the patient including initiating the use of nicknames.

4. Dr. Oluwole kept inappropriate material of a sexual nature in his office including condoms, lubricant and sexually explicit photographs.

D. ADMISSIONS

2. Dr. Oluwole admits the allegations contained in the Notice of Hearing and agrees the allegations constitute professional misconduct.

E. DISPOSITION

3. Dr. Oluwole and the College agree as follows:

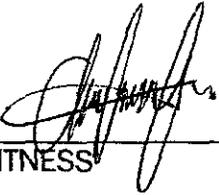
(a) Dr. Oluwole's licence to practice medicine issued by the College of Physicians and Surgeons of Nova Scotia shall be revoked immediately and his name stricken from the Register;

(b) In the event Dr. Oluwole wishes to apply for reinstatement of his licence to practice in accordance with the provisions of the Medical Act, the content of the College's file concerning the investigation and resolution of the Complaints of Patients A, B and C shall be available for review.

F. EFFECTIVE DATE

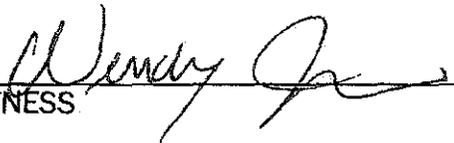
4. This Settlement Agreement shall only become effective and binding when it has been recommended for acceptance by the Investigation Committee of the College, and accepted by the Hearing Committee appointed to hear this matter.

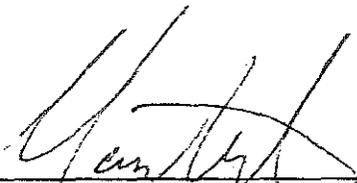
DATED at London, Ontario this 20 day of Aug, 2012.


WITNESS

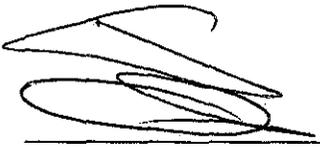

DR. BOLARINWA OLUTOSIN OLUWOLE

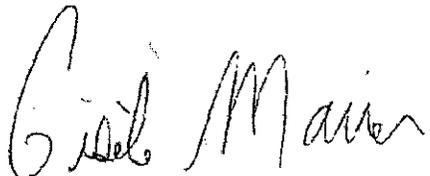
DATED at Halifax, Nova Scotia this 19th day of September, 2012.


WITNESS

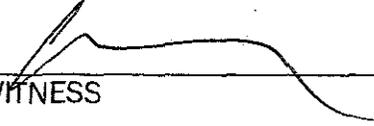

MELANIE COMSTOCK, COUNSEL FOR THE
COLLEGE OF PHYSICIANS AND SURGEONS
OF NOVA SCOTIA

DATED at Halifax, Nova Scotia this 20th day of Sept., 2012.


WITNESS


CHAIR, Investigation Committee "A" of the
College of Physicians and Surgeons of
Nova Scotia

DATED at Halifax, Nova Scotia this 26th day of October, 2012.


WITNESS


CHAIR, The Hearing Committee of the
College of Physicians and Surgeons of
Nova Scotia