

COMMUNIQUÉ for the Health Industry

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CHALLENGE TO THE MANDATORY REVOCATION PROVISIONS UNDER THE *REGULATED HEALTH PROFESSIONS ACT*

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The Ontario Court of Appeal recently confirmed the mandatory five year revocation of the professional license for regulated health professionals who sexually abuse their patients.

The appeal was at the behest of a physician, Dr. M. The Ontario Medical Association and the Ontario Nurses Association were both granted intervenor status which allowed them to make submissions on the issues in support of Dr. M's position.

The Attorney General of Ontario and the College of Nurses of Ontario were also granted intervenor status and supported the position of the Respondent, the College of Physicians and Surgeons of Ontario, in maintaining this statutory remedy.

Dr. M claimed that the (CPSO) mandatory revocation provisions under the RHPA infringed his Charter rights namely:

1. His right to life, liberty and security of the person; and
2. His right to be free from any cruel and unusual treatment or punishment.

Background

Dr. M engaged in a sexual relationship with his patient, A.K., for two years. During this time, Dr. M continued to treat A.K., as a patient, and provided psychotherapy. Dr. M billed OHIP for these services.

A.K. was a physiotherapist who also began to treat Dr. M as a patient. Interestingly, A.K. was not disciplined by the College of Physiotherapists of Ontario and did not have her Certificate of Registration revoked.

Dr. M was found to have sexually abused his patient as defined by subsection 1(3) of the *Health Professions Procedural Code*, (The Code) under the *Regulated Health Professions Act, 1991*.

Sexual Abuse

The definition of sexual abuse includes "sexual intercourse or other forms of physical sexual relations between the member and the patient".

Therefore, pursuant to subsections 51(5) and 72(1) of the Code, the Discipline Committee of the CPSO was mandated to revoke Dr. M's Certificate of Registration for five years.

On the appeal, the Court found that a physician does not have the constitutional right to practice as a physician and that the mandatory revocation for engaging in a sexual relationship with a patient, albeit "draconian", did not breach any Charter right.

The Court pointed to the propriety in having a zero tolerance approach prohibiting any sexual relations between a regulated health professional and his or her patient. Further, with the exception of physicians who provide psychoanalysis or psychotherapy, it is clear that the prohibition against sexual relations pertains to a regulated health professional and a patient, and once the patient relationship is terminated, he or she is free to engage in a consensual relationship. Please note that the CPSO policy states that no sexual contact between a physician and former patient should occur for a period of one year following the date of the last professional contact with the patient.

It is for these reasons that the Court confirmed that Dr. M's rights had not been breached.

As you are aware, each regulated health professional has a statutory obligation to report if they have reasonable grounds to believe, obtained in the course of practicing the profession, that another member of the same or a different College has sexually abused a patient. Failure to report could be considered professional misconduct.

If you are an administrator in a facility where one or more members of a College practice, you have a duty to report if you have reasonable grounds to believe that a member has sexually abused a client. Please note that these reports must be made within thirty days of learning of the alleged sexual abuse.

If you have any questions with respect to this decision, reporting obligations or dealing with these types of situations, please do not hesitate to contact our health industry practice group.

ABOUT THE AUTHOR

Rebecca Durcan is a lawyer practising in our Health Industry Practice Group. Rebecca provides advice to clients on matters such as mental health, coroner's inquests, physician privileges, and other administrative and advocacy issues.

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