



MEMOIR

Zero Sum

In implementing zero tolerance for sexual abuse, has the College of Physicians and Surgeons of Ontario become a source of harm to the patients it's trying to protect?

BY MARY ROGAN
ILLUSTRATION BY ALAIN PILON

"SO, HOW DID YOU AND YOUR PARTNER, Barbara, meet?" people sometimes ask me. If I'm feeling particularly perverse, I'll say we met at the doctor's office, which is true — only it was Barbara's office, and she was my psychiatrist. Our first appointment was almost eighteen years ago. After a decade of psychotherapy, we fell in love. She immediately stopped being my shrink, we both left our respective husbands, and before you could say "Thelma and Louise," we were hurtling toward a legal Grand Canyon with the College of Physicians and Surgeons of Ontario hot on our asses. As everybody but me seemed to appreciate fully, the CPSO takes a zero tolerance approach to relationships between psychiatrists and former patients. Or at least they did until about a year ago.

Last December, Barbara walked into our kitchen and, without a word, handed me her copy of *Dialogue*, the College's mail-out to members. Skimming the story on page fourteen, I thought: you have to be fucking kidding me. In reversing two key elements of its sexual misconduct policy, such that a doctor no longer has to wait a year before dating a former patient, and psychiatrists aren't necessarily banned for life from dating theirs, the College had ostensibly given Barbara and me the thumbs-up seven years after we'd gotten together. I searched the magazine from cover to cover, looking for my name in a corner somewhere with "apologies to" underneath. No such luck.

You may not think I'm owed an apology. After all, in the end I got the girl and the happy ending. You might even argue that it's worth a few innocent fish getting caught up in the net to catch the big bad fish, which is to say patients need to be protected at any cost from unscrupulous and dangerous doctors. Such as the physician who used a therapy he called "pelvic bonding," which involved pressing his patient's face into his crotch to recreate the safe feeling she would have

had as a child hugging her father.

This doctor was brought before the College's discipline committee in 1990 but got off without a reprimand. When the case made headlines, the College decided to set up the Task Force on Sexual Abuse of Patients by Physicians, to see how deep the cesspool went. A panel of five, led by feminist lawyer Marilou McPhedran, travelled across Ontario and invited people to tell their stories of sexual abuse by their doctors. Over a three-month period, the task force heard more than 300 such accounts, involving degrading sexual comments, fondling, emotional abuse, and rape. Moreover, the victims (almost exclusively female) reported feeling powerless to confront their abusers (almost exclusively male) under the CPSO's existing complaints procedures.

Ugly stuff, and it packed a punch. By 1994, the provincial Regulated Health Professions Act (governing twenty-one health professions in all) was amended to include Bill 100, defining any sexual relationship between a health care provider and a patient as abuse, which results in the automatic revocation of the member's professional registration — a stance

commonly referred to as zero tolerance for sexual abuse. It also stipulated that any health care worker who heard about such a relationship had to report it. Taking the broadest possible interpretation of zero tolerance, the College then established its own rules against health care providers dating former patients.

Here's the problem: Armed with compelling stories, the task force had painted a disturbing dystopia of power-hungry physicians unable to check their corrupt urges, flagrantly victimizing fragile women too weakened by erotic transference to defend themselves. In this light, informed consent was simply not possible, not ever, because the inherent power imbalance between doctor and patient lasted a lifetime. Yes meant no, so to speak—which might explain why the College has never allowed me to speak for myself.

Telling people how you fell in love is a little like telling them about the dream you had last night—the story is difficult to translate and potentially uninteresting to others. Our tale was quite ordinary, dressed up with a few quirky details. Two gals instead of the usual bowl of mixed nuts, both married with three kids between us, a refined European Jew and a less-than-polished Irish American Catholic from the Bronx. And, of course, the detail that caused the most consternation: she was my psychiatrist.

When I first went to see Barbara, we were both in our early thirties. I still remember my surprise when she greeted me at her office door. The older, plain-looking doctor I'd imagined when we set up my appointment on the phone had been replaced by a young woman with nut brown skin, wavy black hair, and a frumpy blue flowered dress that threw her good looks into relief. But, of course, what I remember most about that first meeting was the dread I felt about the work in front of me.

I didn't go to therapy to talk about the red sled I didn't get for Christmas, and the next few years were the most difficult of my adult life. I was hospitalized for depression, I struggled to eat normally, I was unavailable to my common-law husband and our son for long periods. And then I got better, the way people get better if they keep rowing for shore even when it might just be the horizon. Eventually, I started working again, things got easier at home, and I began to take notice of the person I'd been toiling away with four days a week for almost a decade. In spite of the snow fences placed around our relationship, Barbara and I became friends. And then much more.

If every good love story has a before-and-after moment, mine happened when I had surgery in the spring of 2000. I was sick as a dog with a post-op infection that nearly killed me. It seemed easy after that to tell Barbara I was in love with her. Not so for her. She wasn't nearly as naive about the consequences as I was but, in hindsight, was twice as brave.

Over the next year, she and I talked about transference and counter-transference, boundaries and prohibitions. Still, by the summer of 2001 we had made our decision to be together. Barbara told her husband first. The next day I told mine. "You're in deep trouble," he said, and despite my conversa-

tions with Barbara I honestly didn't know what he meant. The day after that, he phoned our former marriage counselor, who immediately notified the authorities. And later, arguing that I was very sick and needed help, he called my brother, on his honeymoon in Paris. He even phoned Barbara's geriatric parents to ask them to intervene. He told anyone who would listen, it seemed, that I was being sexually abused by my psychiatrist.

Looking back, it's still hard to believe the hysteria that ensued. Within the week, Barbara and I were hustled off by concerned parties to a therapist who, under the radar, specialized in doctors and patients who had "crossed over" and now wanted to "cross back." Apparently, he didn't lack for work. He seemed confused, however, about whether he wanted to be Drew Pinsky, coaxing us to break the habit, or Harriet Tubman, guiding us to a land where attitudes toward people like us were "more progressive" (in our case, there was plenty of choice; while sexual contact between a doctor and a patient is defined as abuse across the country, outside Ontario there was no clear ban on relationships with former patients, including psychiatric patients). On the way to some of those crazy appointments, I thought about my brother—not the one who'd had his honeymoon interrupted, but the one who twenty-five years earlier had been carted off to a Catholic priest to be hypnotized out of being gay a week before he got married. That didn't take, and after a few weeks it was clear that this cake couldn't be unbaked either.

Barbara and I moved in together that September. Those were strange days. We were happy, as happy as either of us had ever been, but it sometimes felt as if we were looking at our happiness through the wrong end of a telescope. My son was diagnosed with Crohn's disease, and Barbara's youngest with Asperger's syndrome. Her family was unable to accept our relationship, not because she had been my doctor but because we were lesbians. My ex-husband, for his part, had insisted that Barbara not answer our home phone lest he call, and that she keep a low profile at my son's school. He also asked for and received \$80,000 from Barbara for what he described as a shared debt I had left behind. Barbara closed her private practice because she was terrified from one day to the next that her licence would be yanked, leaving her patients stranded.

It wasn't, but like a virus that slips in undetected, that first mandatory report would soon have reinforcements. The College received a second report, in February of 2002, from my new psychiatrist, and a third in April, this time from my ex-husband's. Still, the CPSO's investigative department didn't take action until the end of August, when my ex's psychiatrist phoned to follow up. In a written report dated September 9 (included in evidence eventually forwarded to Barbara by the College), an investigator documents her response: "We discussed the College's process as it relates to...the limits on our powers when the patient is refusing or unwilling to cooperate." It was true that I was unwilling to co-operate in any prosecution of Barbara, though I can't imagine how they knew that without talking to me.

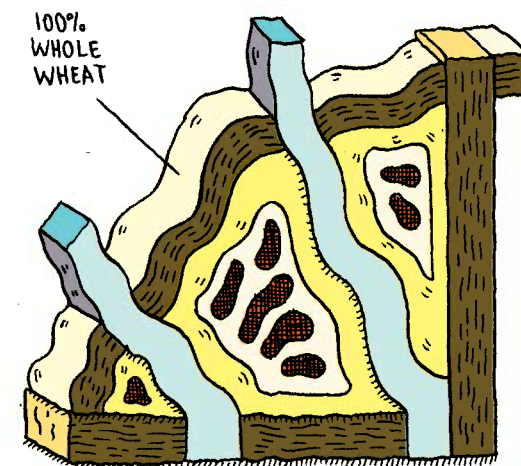
In any case, the news that my ex was, according to his doc-

tor, "extremely disturbed at the fact that the College [had] not acted on the information provided to date," was apparently sufficient motivation for the College to launch an investigation, and in May of 2003 investigator Tom McNamara called our house to inform Barbara that he was on the case. We listened to his message on speakerphone, the two of us huddled over our little Panasonic, which seemed to have grown to the size of a microwave. I made some tasteless joke about Anne Frank and the inevitable knock at the door. Barbara, whom one of my brothers once affectionately described as "most likely to confess to being the second shooter on the grassy knoll if the right pressure was applied," called McNamara back and invited him over. He suggested she call a lawyer instead, but we were both exhausted from a year spent in hiding and insisted he come and get this over with.

Two hours later, he was filling our doorway, looking every bit the Irish ex-cop familiar to me from family gatherings in the Bronx. He sat at our dining-room table with his little flip-top notebook and seemed genuinely startled by our frankness. We told him, yes, we were partners, yes, Barbara used to be my doctor, and no, I didn't want to make a complaint to the College. As strange as it sounds, I was grateful for the chance to tell my side of the story. After he left, we both felt giddy with relief. Then the CPSO ordered Barbara to hand over my medical chart.

Back in the day, Toronto lawyer Marlys Edwardh had confiscated lots of charts. She was one of several high-powered gunslingers brought in by the College in the early 1990s to prosecute doctors under the amended act. She'd worked some tough cases, but after a few years some of the prosecutions began to seem unreasonable to her. Now that she was playing for the other side, she was the obvious choice to protect my chart, which contained ten years' worth of the most intimate aspects of my life and could be used against Barbara in any number of ways.

I met Edwardh at the office she then shared with her partner, Clayton Ruby. The place had a '70s vibe, right down to



the jumbo artwork on the walls and Ruby's English pointer wandering the hallway. In her deep, expansive voice, Edwardh warned me that the College wasn't playing around. Under Sections 75–79 of the Health Professions Procedural Code of the Regulated Health Professions Act, the College could even issue a search warrant for our home if Barbara didn't produce my chart. Edwardh was also keenly aware of how important it was to keep the chart privileged, and ended up successfully arguing that investigators could confirm the chronological details of my relationship with Barbara through my OHIP records, because obviously Barbara stopped billing OHIP when I stopped being her patient. She then asked that I have standing in the proceedings against Barbara, that I be allowed to speak for myself. The College turned her down.

The summer of 2003 seemed interminable as Barbara's case wound its way through the system. The first College prosecutor went on maternity leave; other lawyers took holidays. Meantime, SARS hit Toronto, and both Barbara, who was by then working as a geriatric psychiatrist at a large seniors' facility in the city, and my son, whose Crohn's medication left him significantly immune-compromised, had to be on high alert. At the end of the summer, as our anxiety mounted about what the College's next move would be, Barbara left her job at Baycrest, and we soon started to run out of money.

Barbara was finally called to appear in front of the discipline committee on March 26, 2004. The day before, I went shopping for an outfit for her to wear at the hearing. I decided on something expensive, something we couldn't afford and she'd never buy for herself: trim charcoal green slacks and a sharp Jones New York jacket. It seemed unreasonably important to me that she look good when she faced the firing squad. As we stood together outside the ugly, squat building across from Women's College Hospital, waiting for her lawyers to show up, I smoked hard enough to set my hair on fire. Barbara, a closet smoker, was terrified to steal a puff lest someone from the discipline committee see her. It all felt a bit like high school.

Inside the building, it was freezing cold, and Barbara sat next to me on a bench, shivering. In some ways, it was anticlimactic, because the lawyers for both sides had already inked a deal a few months earlier. The College had withdrawn its original charge of sexual abuse—which is perhaps even more alarming than independently concluding that I *had* been abused, given its position on doctor-patient intimacy—and had instead found Barbara guilty of professional misconduct, in that she engaged in actions "that would be regarded by members as disgraceful, dishonourable or unprofessional."

The opposing lawyers went through the motions of reviewing the case, during which I heard nothing I recognized as my story. I never even heard my name. I was still the unwilling complainant. The official reprimand from the discipline committee took place immediately afterward, behind closed doors, with just Barbara and the five committee members. They suspended her licence for twelve months, three of which would be waived if she completed the College's ethics

and boundaries course. And there would be no professional restrictions on her. She would be free to reopen her private practice without supervision.

Our saga dragged on for months, however, as we went a few more rounds with the College over its planned publication of Barbara's case in the Discipline Summaries section of *Dialogue*, informally known as "The Hall of Shame." Dr. Michelle Horonczyk prescribing methadone for an incarcerated patient who later became her boyfriend, Dr. Gregory Smith defrauding OHIP out of around \$169,000, and Dr. Wahid Abouelnasr throwing a temper tantrum when he had to wait for emergency treatment of a puncture wound sustained after stepping on a rusty nail while renovating his bathroom—it all makes for juicy reading but can obviously be incredibly damaging, not only to the docs but to their families and, in some cases, their patients (unnamed but still often identifiable).

The following qualification eventually appeared, along with a summary of Barbara's offence, in the July 2006 issue: "After the physician-patient relationship was terminated, Dr. Schogt and the patient began an intimate relationship. Since that time, Dr. Schogt and the patient have lived together as a family, along with the patient's child, for whom they have both assumed parental responsibility. At no time has the patient complained to the College about Dr. Schogt or their relationship. This matter came to the College's attention by way of mandatory reports." It's worth noting that the following issue included a letter to the editor from a doctor convinced that Barbara had gotten off lightly because she was a female doctor who had taken up with, he assumed, a male patient. My ex-husband, too, thought the College had been lenient, he later informed me, adding that he'd been granted an audience with the College to tell them so.

Between the time of her suspension and her appearance in *Dialogue*, Barbara and I got married. Along with friends and family, two of the three doctors who had filed mandatory reports about our relationship were in attendance as we made our vows. But for the fact that he'd passed away the year be-

fore, the third would have been there as well to see us stepping into our happily-ever-after.

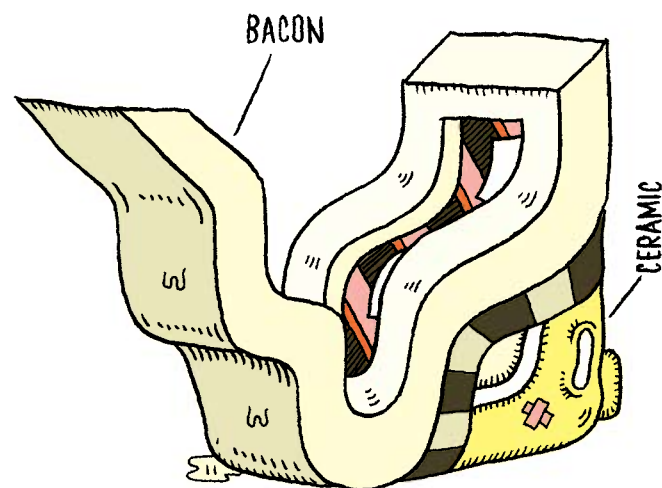
But, of course, living happily ever after in the real world is complicated. Discovering that the College had tweaked its sexual misconduct policy last December was the sucker punch that brought me to my knees—a brutal reminder of just how badly I'd been knocked around. Getting my ass kicked had been bad enough; to have the College insist that it was only trying to protect me had been absolutely crazy making. And while I'd tried to fight back, each time they refused to acknowledge me it was like punches catching air. I wondered if now, after all this time and the recent changes, they would finally talk to me.

I spoke first to senior communications coordinator Kathryn Clarke, who wanted to be clear that the College still supported zero tolerance for sexual abuse and had merely changed its "dating guidelines." She listened politely as I sputtered out my story in 100 words or less, then told me that no one at the College would be available to address Barbara's case. It wasn't "useful to talk about specific cases when talking about a general policy," she said. And when, afterwards, I tried to speak directly to Barbara's prosecutor, the call was forwarded to Clarke, who kindly called to remind me that any appeal I made to anyone involved in the case would circle back to her.

Shut down again by the College, I thought I'd try to reach Marilou McPhedran of task force fame, now principal of the University of Winnipeg Global College. Had the intervening years perhaps softened her position? She came out swinging in the first few minutes of our conversation, letting me know she wasn't about to be used as a foil in some magazine piece undermining zero tolerance for sexual abuse. And while I tried mightily, I was unable to convince her that wasn't what I was trying to do.

I fully support the notion that even a little sexual abuse is not okay. My beef is with the blunt instrument designed to stamp it out, since, as the saying goes, when you're a hammer everything starts to look like a nail. Is it really so difficult to distinguish harmful behaviour from benign? Other governing bodies in Ontario don't think so. The Law Society of Upper Canada voted against zero tolerance for sexual abuse in 2004, and two years ago the Ontario Ministry of Education abandoned its zero tolerance for violence policy. It seems reasonable then to expect a profession in the business of discerning subtle differences in patients' emotional and physical experiences to give discretion a whirl.

And it's tempting to believe that changes in the College's dating guidelines do indeed represent a more sophisticated approach to dealing with the sexual abuse of patients, perhaps even a more enlightened take on power relations between patient and doctor, but I'm not optimistic. The College is still dismissing anything I have to say, after all. It's still making decisions that affect me and my family, still, in effect, telling me who I am, what I think, and what's best for me, all without knowing me. The bottom line is this: I have felt many things in my romance with Barbara, but the only time I've felt like a victim was in my encounters with the College. 🐻



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