

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Jeffrey Steven Gale, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names of the children of Dr. Gale under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

The Committee also made an order to prohibit the publication of the identity and any information that would disclose the identity of the sexual misconduct witness 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 offense and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offense and not more than \$50,000 for a second or subsequent offense; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offense and not more than \$200,000 for a second or subsequent offense.

Indexed as: Gale, J. S. (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. JEFFREY STEVEN GALE

PANEL MEMBERS:

DR. P. CHART (Chair)
D. GIAMPIETRI
S. BERI
DR. M. GABEL (minority opinion)
DR. C. LEVITT (minority opinion)

Hearing Dates:	January 28 to 31, February 1, 4, 5, 7 and 8, 2013
Decision Date:	December 13, 2013
Release of Written Reasons:	December 13, 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 Town C on January 28 to 31, February 1, and February 4, 5, 7 and 8, 2013. At the conclusion of the hearing, the Committee reserved its decision on finding.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Jeffrey Steven Gale committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code (the “Code”), Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, in that he sexually abused a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, 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.

RESPONSE TO ALLEGATIONS

Dr. Gale denied the allegations in the Notice of Hearing.

FACTS AND EVIDENCE

Overview

The allegations of sexual abuse and disgraceful, dishonourable or unprofessional behaviour relate to the alleged conduct of Dr. Gale with Ms X, the complainant, from January 24 2007 until August 2008. Ms X was a patient of Dr. Gale, an ophthalmologist with a subspecialty in disease of the retina, from January 24, 2007 to June 12, 2008. She was treated in his clinic with multiple outpatient procedures, and underwent surgery performed by him on two occasions. While still a patient, she was referred to, and hired by, his wife, first as an occasional baby sitter, progressing to full time “nanny”, and then as a full-time live-in nanny. She alleges that while she was his

patient and starting in May 2008 after a return from a family holiday in Florida, she and Dr. Gale commenced a sexual relationship which included oral sex and sexual intercourse which took place at the Gale home, in Dr. Gale's office, and later, after she was no longer his patient, at her parents' home in Town A, Ontario.

Dr. Gale denies that sexual contact occurred.

The Issues

The issues separate out as follows:

1. Did Dr. Gale sexually abuse his patient, Ms X? Specifically, did he engage in sexual intercourse and/or oral sex with her while she was his patient?
2. Did Dr. Gale's behaviour and interaction with Ms X, as her physician, constitute conduct or an act or omission relevant to the practice of medicine that was disgraceful, dishonourable or unprofessional? In particular, did the hiring of Ms X as the Gales' nanny and the subsequent interactions between Dr. Gale and Ms X (apart from the sexual relationship) constitute disgraceful, dishonourable or unprofessional conduct?

The most serious allegations and central to this matter is the allegation of sexual abuse involving oral sex and sexual intercourse. Such activities occur in private and as a consequence significant weight is placed upon witness credibility. In this matter, there was witness support for two diametrically opposite versions of the events. There are instances where only one version of events is possible, yet the Committee heard support for two different versions of the events. The task of the Committee was to assess the credibility and reliability of each witness, consider all of the evidence and determine if the College had proven its case on a balance of probabilities based on clear, cogent, and convincing evidence.

Witness Overview

The following witnesses were heard and were central to understanding the circumstances surrounding the allegations.

- Ms X: the complainant. She goes by the name '[first name used by Ms X]';

- Mr. A: father of Ms X. He had little involvement with the events and testified principally as to one facet of the evidence;
- Mr. B: Ms X's boyfriend at the time when her interactions with Dr. Gale began. He later moved to [a state in the United States]. Ms X ended the relationship with Mr. B during her visit to his place of work in [a state in the United States] in May 2008, although he continued to have sporadic telephone and email contact with her and her mother and, on one occasion, with Dr. Gale's wife;
- Mr. C: Manager of the College of Physicians and Surgeons ("CPSO") Public and Physician Advisory Service ("PPAS"), who testified as to the College's policy on treatment of family and as to what advice would be given to a physician concerning employing a patient as a babysitter and nanny;
- Mrs. D: mother of Ms X. She spent time at the Gales' home, and socialized with them during her stays in Town B. She was involved with the Gales to the degree of exchanging cards and presents, and sleeping at their house at the time of certain events under examination;
- Dr. Jeffrey Gale: an ophthalmologist with a retinal subspecialty, practising at Hospital 1 in Town B, and living with his wife and two children and various childcare helpers in Town B, Ontario. A number of the witnesses referred to him as "Jeff";
- Ms E: one of the Gales' babysitters and former teacher of their older child. She was a friend of Mrs. V, as well as an employee;
- Ms F: Ms F was a babysitter before and during the time Ms X was employed and became a full-time nanny after Ms X was fired. She was the close friend and confidante of Ms X until ending the relationship following a call, the content of which is disputed; and
- Mrs. V: wife of Dr. Gale;

Various exhibits were entered into evidence and had an impact on the assessment of the credibility of the witnesses.

Facts Not in Dispute

The following facts were not in dispute.

Ms X was a patient of Dr. Gale from January 24, 2007 to June 12, 2008. She became employed at the Gale home in approximately August 2007. She lived there in a basement room starting in approximately November 2007. She traveled with the Gales on a holiday to Florida in May 2008. Ms X was treated as “family” and interactions and conversations were very relaxed and with minimal social boundaries. She was terminated as the Gales’ nanny in the first week of June 2008, after Dr. Gale performed surgery on her on June 3, 2008.

The Gale household consisted of Dr. Gale and Mrs. V and their two children, QRS (who was 7 years old when Ms X began work there) and XYZ, then 9 months old. As well, there were two other child caregivers who sometimes stayed over: Ms F who worked evenings routinely; and, Ms E who worked part-time, had a child of QRS’s age, and had been his Montessori teacher. Ms E was also a friend of Mrs. V. She would drive the children to or from school at times and spent many meal times at the Gales’ home, as well as babysitting at the house.

Mrs. V suffered from a [medical condition] that meant she was often ill during the day and night, and could spend up to several hours at unpredictable times in [a room in the house].

At Christmas 2007, after Ms X moved in with the Gales, the following people were present at various times at the Gale residence: the Gale family, Ms X, Mr. B, Ms F, Ms E, and Mrs. D.

In the spring of 2008, there was a family trip to Florida. Ms F and Ms X accompanied the Gale family, occupying a rental house with separate bedrooms for each of them.

Regarding the layout of the Gale home, the top floor contained the master bedroom, two smaller bedrooms (one for each child), and a glass-doored library. On the main floor, there was a large kitchen, which functioned as a centre of activity, a living room, and a dining room. Downstairs was the bedroom that Ms X occupied, reached via a room with a large screen TV. There was a private bath there as well. The backyard had a hot tub and trampoline, both not visible from the kitchen window, and there was an attached garage, which was used for smoking by various residents of the house. The house had an alarm system and an intercom system. When Ms X

moved in, her double bed was placed in XYZ's room, as there was a bed in the basement room already.

With respect to the layout of Dr. Gale's workplace at Hospital 1, the clinic was on the 6th floor, with staff, residents, and fellows, and Dr. Gale had an office on the second floor adjacent to his secretary's office.

Witness Testimony

What follows is a summary of the evidence of each witness. Credibility assessments of each witness will be dealt with later in the reasons.

a) Ms X

The complainant was in her early twenties when she first met Dr. Gale, having moved to Town B from Town A in order to live with her boyfriend and to take an Early Childhood Education course at a local institution. She is a type 1 diabetic (juvenile diabetes) since childhood and suffered from chronic eye complications. She had been seeing an ophthalmologist in the Town C area, but found the travel onerous and wanted an ophthalmologist in Town B.

Her first appointment with Dr. Gale, in late January 2007, occurred concurrent with her boyfriend, Mr. B, starting a new job in [state in United States] with Company S. She was upset at that appointment as she had just dropped Mr. B off at the airport and explained her situation to Dr. Gale. Dr. Gale advised her at this first appointment that she needed vitrectomies, and she requested it be put off. Through the intake interview, Dr. Gale was informed of her personal situation, her area of study and living situation.

Ms X saw Dr. Gale again six months later, at which time she had a laser procedure. She had been hoping to move to [state in the United States] to be with Mr. B, taking work as a nanny, but told Dr. Gale that she was unable to get medical insurance coverage due to her eye and diabetic state and therefore could not go. On either this appointment or the next, Dr. Gale asked her if she was still looking for work, and suggested she call his wife concerning employment as a babysitter. She did so, and had an interview with Mrs. V. She remembers Dr. Gale was there wearing a t-shirt with the slogan "I'm a keeper". She knew prior to being hired that there was a need to clear

with some medical authority that it was alright for Dr. Gale to hire her, as she was Dr. Gale's patient. She stated that Dr. Gale had talked to her about the fact that, in general, he was not supposed to hire patients, but had done so once before. They had made it clear that Mrs. V was hiring her. She testified that the Gales discussed placing an ad at a college (posted by Ms F where she was a student) and therefore Dr. Gale would be able to say Ms X had replied to that posting.

Ms X was hired and worked for the Gales as an occasional babysitter from July 2007, and became a full time "nanny" in September 2007. She moved out of the apartment she had shared with Mr. B when her lease was up. She was offered the opportunity, at that time, to move into the Gales' house. She testified that she was not ready for this and moved into a rooming house closer to their home. All the residents were men and it turned out to be a hostile, drug using and dangerous area. She later asked Mrs. V if the option to move in was still open as she did not feel safe; it was, and she moved in in November 2007. (Mrs. V testified that she saw the place when driving Ms X home, was astounded at how rundown and dangerous it was, and insisted Ms X move to their place. That weekend she, with some additional help, moved Ms X.)

At the Gales, Ms X had a basement room with its own bathroom, telephone and closable door. It was reached through a room which contained a large projection TV and sectional couch.

After moving in, Ms X took care of the children and did some housework as well. She was relieved in the evening by another babysitter, either Ms F or Ms E, both of whom worked part-time. She knew Ms E had been QRS's Montessori teacher, and that her child and QRS continued together at a subsequent school. Ms E carpooled with Mrs. V and on occasion was at the Gale house for an hour or so for dinner, while at other times not for weeks.

Ms X described the atmosphere of the house as casual, fun, and laid-back, and she stated that she had a great friendship with Dr. Gale and Mrs. V. She testified she was much closer to Dr. Gale than Mrs. V. They shared the same sense of humour. She said that she and Dr. Gale had a flirtatious relationship; they talked about personal things, frequently watched movies together and took hot tubs together. Ms X testified that she and Dr. Gale liked the hot tub and frequently it was just the two of them. It was often after 9:00 p.m. when the children were in bed that they would watch movies together in the home theatre which was in the basement outside her

bedroom. Occasionally, Ms F, when babysitting, would join them if she was around. Mrs. V would join them as well on occasion but was often too tired to do so. Ms X spent most nights at the Gales, since she did not know many people in Town B.

All adults in the household (Ms X, Dr. Gale, Mrs. V, Ms F, and Ms E) smoked cigarettes. Smoking occurred in the garage at breaks through the day or at the end of the day. When Dr. Gale came home around dinner time, Ms X testified she and Dr. Gale would smoke together in the garage. In addition to cigarettes, Ms X stated she also smoked marijuana, and that Dr. Gale joined her a few times. While she had her own marijuana, Dr. Gale had his own as well. She smoked marijuana on weekends or when the kids were in someone else's care and not when she was on duty. Dr. Gale would occasionally make her a drink at the bar in the basement, otherwise she did not drink. Her friendship with Dr. Gale was not hidden from the others in the household. Ms X stated that "It was very casual. It was very fun. I had a great friendship with both Jeff and [Mrs. V]". There was joking with each other. "We just found the same things funny."

She testified that initially her relationship with Mrs. V was great but was more stressful as they were both in the house together all day. She, Mrs. V and the kids went shopping together. Regarding Mrs. V's health, Ms X testified that she was very sick physically and mentally and stressed with constant headaches. She always had something medically wrong and spent a lot of time in [a room in the house] and master bedroom. She described Mrs. V as being angry a lot and having little to do with her children.

Ms X stated she had a good relationship with both children and loved both of them, although she was much closer to and primarily with the younger child, XYZ. She could get frustrated with QRS but still loved him. She denied that she had ever had major issues with him. She agreed that there had been discussions with Mrs. V concerning QRS's impression that he was not loved by her; Ms X thought of this as a friendly critique, and worked to become closer with him. She had "no recollection" of ever giving QRS a Barbie doll or of hanging it by a noose outside of QRS's bedroom. She denied that she had ever told QRS that there was a Barbie cemetery at her home but she testified that she had had many Barbie dolls as a girl and had a "Barbie garden" at her home where the dolls were painted and woven through the bushes in the back yard.

Ms X testified that the relationship between herself and Dr. Gale first changed when they were on a vacation in Florida in 2008, that included all the Gales, herself, and Ms F. She and Ms F had their own rooms and Dr. Gale and Mrs. V had a room. XYZ was rotated between the three adult bedrooms for night care. Half way through the vacation, she had bleeding and lost vision in one eye. On one afternoon soon after, she was in her room lying on her bed crying, when Dr. Gale came into the room, lay down next to her and put his arm around her. She testified he said he loved her several times and then while looking at her said “you know I love you right”. Her impression at that time was that he was simply a friend comforting her. She did not think anything about it. The door was open and Ms F had been in to see her just before Dr. Gale came in. Ms X was not cross-examined on the “I love you” statement (and Dr. Gale said nothing about it in his testimony).

Ms X described an occasion prior to leaving Florida when she, Ms F, and Dr. Gale went to Wal-Mart at 11:30 p.m., as Ms F needed a bathing suit and they needed some food. She described running around and acting silly and ultimately, she dared Dr. Gale to get into a small umbrella stroller to be pushed around saying that if he did so she would “flash” him her breasts. She did this as a follow-up to the ongoing “joke” about the women being topless around the pool while he was away with the children. Dr. Gale had complained he had not ever been there to see anyone topless. Dr. Gale got into the stroller but it collapsed, she flashed him quickly and then pretended nothing happened. Ms X said she was not sure if Ms F saw this, and Dr. Gale did not have any specific reaction. Ms X was not challenged in cross-examination on this point (and no other witness gave evidence on this point).

On the last night in Florida, she was responsible for XYZ, so she took the baby monitor by the pool with her and swam in the pool. Dr. Gale joined her in the pool. It was around 11:00 p.m. He came over close to her so they could talk and not disturb or wake up the others. She stated that she had her arms over an inflatable raft and he put his arms over it from the other side, reached around and pulled on the strings of her bikini top. He did undo it but it stayed in place. She laughed jokingly and told him to stop. At that time, XYZ woke up and was heard on the monitor, so she went inside, retied her bathing suit, got XYZ his bottle and then went to bed. Up until this point, there had never been anything really sexual. Under cross-examination, it was put to Ms X

that in her statement to the College, she made no mention of the bikini top incident. She replied that she didn't have time to mention everything and was overwhelmed.

Ms X described the first episode of sexual interaction as occurring on May 13, soon after they were home from Florida. Dr. Gale came down at 2:00 or 3:00 a.m. and woke her up saying her name, rubbed her hair and kissed her on the lips and forehead and told her he loved her and had been falling in love for months, was unhappy with his wife, wanted to leave her and wanted to be with Ms X. She stated that she told him that she was confused, had a boyfriend, and he was married. He started crying; he got in bed with her, and they ended up kissing. She testified that while kissing, he put his hands down her pants, was fondling her, and that she performed oral sex on him. She described his body as hairy chested with moles on his back. His pubic hair was trimmed but not shaved, and he was circumcised. He then went back upstairs to sleep with his wife. She said she felt guilty and it went against everything she morally believed in. She went to sleep and he brought her coffee the next morning and asked if she was ok.

Following this event, Ms X stated that the sexual relations continued almost nightly from May 13, 2008 throughout the balance of May 2008, except when the Gales left for a conference in the United States and when she left for [state where Mr. B lived], the last week of May. There was kissing, fondling, oral sex, and just before she left for [state where Mr. B lived], there was intercourse for the first time. She stated she was off birth control pills prior to her going to Florida as she had run out and that they used condoms, and then she took birth control pills on her return from [state where Mr. B. lived]. She stated that Mrs. V was totally unaware. When Dr. Gale came downstairs, he would bring the baby monitor, and he typically stayed about an hour. On one occasion, the baby woke up and he went upstairs to get the bottle ready.

In mid-May of 2008, Ms X was seen in Dr. Gale's office. She stated that Mrs. V had dropped her off at the appointment and that the plan was that Dr. Gale would bring her home. Based on the medical record, she testified that at the appointment, at 4:20 p.m., her eyes were dilated. She testified that she had a vitreous injection approximately one to two hours after the dilation of her eyes (the medical record shows that the injection was at 7:30 p.m.). Following the injection, they went to his office on the second floor to get his keys and coat. There, they ended up kissing and performed oral sex on each other in various places (floor, chair). She states that, by

extrapolation, she believes this was probably around 6:00 p.m. She testified that they talked about how they felt about each other and that they could tell no one about their affair.

Ms X testified that she told her friend Ms G, in Town D everything. The morning after Dr. Gale first came to her bed she telephoned Ms G and told her they needed to use MSN so that they could communicate without being overheard. She needed to get it off her chest. Ms X sent an email to Ms G on May 14, 2008 (exhibit 4). This email described the oral sex that Ms X alleges happened in the office as noted above and also stated that “nothing happened last night”. When challenged that the information contained in the email of May 14 saying that “nothing happened last night” was inconsistent with her testimony that oral sex had occurred on May 13, Ms X replied that her dates were based upon the calendar that she had constructed in November 2008 and that the email dates would be more accurate. Ms X testified that she created a calendar of events in October or November 2008 based on her memory at that time. She testified that Dr. Gale’s first visit to her bed was shortly after they returned from Florida and may have been May 11 or 12. Another exchange of emails from June 29 to July 1, 2008 between Ms G and Ms X referred to sexual relations between Ms X and Dr. Gale and were marked as exhibits (6A and 6B). These emails and the May 14th email were admitted to rebut an allegation of recent fabrication, not for the truth of their contents. Ms G did not testify at the hearing.

Ms X had a continuing relationship with Mr. B. He had come to visit at Christmas in 2007, the first year she worked at the Gale house, and stayed with her in the basement room. They spent evenings and mornings at the Gales, although some time was spent at Mr. B’s parents’ house.

Ms X testified that she went on her planned holiday to [state where Mr. B. lived] the last week of May 2008. After three days there, she told Mr. B that they ought to take a break. She did not want him to consider leaving Company S and she could no longer deal with a long distance relationship. She did not tell him about her relationship with Dr. Gale. She returned to Town B on or about June 1st for the scheduled surgery on her eye to take place on June 3rd.

Ms X testified that the night before her surgery of June 2, 2008, her mother had come from Town A to be with her after the surgery and to help out with child care as she was not working. They were both sleeping in her basement room. Around midnight, Dr. Gale came down and stated that XYZ was sick, that Mrs. V needed assistance to care for him, and that he, Dr. Gale, needed to get

his sleep prior to surgery. Dr. Gale also stated that Mrs. V was hoping Mrs. D would go upstairs to help care for XYZ. Following discussion amongst the three, they decided Mrs. D would go upstairs to assist Mrs. V, and Dr. Gale would sleep in the same bed with Ms X in order to get a good night's sleep. Ms X testified that at that time, she had not yet told her mother of the sexual relationship between her and Dr. Gale. Ms X testified that Ms F was not there that night. She testified that Ms F had an obligation and would not be around the next day and that XYZ was going to Ms H's home daycare. Ms H was a neighbour of the Gales.

Ms X testified that during that night, she and Dr. Gale had multiple episodes of oral sex and sexual intercourse. They did not sleep a lot. Early in the morning, as she was performing oral sex on him, they heard Mrs. V on the staircase coming down to awaken Dr. Gale. They quickly separated, rolled over, pulled up their pyjamas and pretended to be asleep. She stated that Mrs. V suggested that Dr. Gale get up, as it was time to prepare for the surgery. Ms X had no remembrance of any reaction on Mrs. V's part on finding them together in bed. Ms X described Dr. Gale as wearing Dr. Seuss pyjamas and a tee shirt.

Dr. Gale drove Ms X to the hospital the morning of her surgery. She recalled how good his coffee and peanut butter on toast smelled as she was fasting. They discussed that she would be under an anesthetic for the surgery and she would have to be careful not to say anything about their affair.

Mrs. D picked Ms X up after her surgery and drove her back to the Gales' home. Ms X developed pain in her eye that afternoon and this was of concern such that Mrs. V and Mrs. D drove Ms X back to the hospital where she saw Dr. Gale again.

Ms X testified that Dr. Gale had told her sometime before surgery and before she went to [state in the United States] to visit her boyfriend, that after surgery she would need one to two weeks of no heavy lifting, bending, no activity, no sex and that she would need to take it easy for up to six weeks so the eye could heal properly.

She testified that at the end of the week after surgery, she and Dr. Gale resumed sexual relations. She said that Dr. Gale told her that it would be fine as they would be slow and gentle. She should not worry.

Ms X described the Gales as generous, and that the treatments she was receiving from Dr. Gale were quite expensive, but as soon as she would sign the paperwork to pay for the medications, the nurse would rip it up. She stated that she was told any other patient would be paying. She estimated she had between six and ten treatments at \$1,800 per treatment. She understood that it was a cost borne by the manufacturing company until Dr. Gale was “caught” and revealed that he had to pay for her medications himself. (Dr. Gale and Mrs. V stated it was clinic policy not to charge any uninsured patient for this preferred medication.)

Ms X stated she was not aware that the Florida trip was a graduation gift for Ms F. She stated that on occasion, she had said she loved the job because she got paid to sleep, which was meant as a joke concerning sleeping with XYZ during his naps. She denied ever saying that if she was ever fired, she was going to allege sexual harassment or wrongful dismissal.

On June 5, 2008, two days after her successful surgery, her mother left to return home. Ms X testified that on June 5 or 6, Dr. Gale told her that he had told Mrs. V that he did not want to start building a new home that they had planned on building. Dr. Gale told Ms X that Mrs. V was upset and abruptly left home for the Bahamas.

Mrs. V apparently called the next day and ordered Dr. Gale to fire Ms X which he proceeded to do. Ms X was surprised. Dr. Gale said that his wife wanted her gone because she had spoken out to a neighbour and had criticized Mrs. V. Mrs. V also had said that Ms X was lazy. Ms X did not expect to be fired but she had said to the neighbour Ms H that she was worried about Mrs. V because she was sick, unhappy and was taking a lot of pills. She testified that she hoped Ms H could help.

Ms X stayed in the home until the day before Mrs. V returned. Ms X testified that the Saturday after she had already been fired, she spent the whole day in bed in the master bedroom with Dr. Gale, having sex. She said the children were away with Ms F on Ms F’s parents’ farm. She said that there are pictures taken with her camera that confirm that Ms F went to the farm with the children. According to Ms X’s testimony, when Ms F returned with the children, each child slept in his own room and she and Dr. Gale, taking care of the children, slept in the master bedroom together. During that week, Ms F looked after XYZ and QRS was in school.

Ms X testified that after she was fired (June 7) and before she left the Gale home (June 12), she and Dr. Gale had the house to themselves and continued their sexual relationship during this time. She testified that she was planning to stay another day (until June 13). However, Ms E came on Thursday evening (June 12) to the house and was concerned that Mrs. V might be returning early and there could be trouble. Ms X testified that Dr. Gale wanted her to stay one more night but after discussing this, they decided it was best for her to leave. Mrs. D came and drove her daughter home the evening of June 12.

At that time, Ms X expected the relationship with Dr. Gale would continue; he was going to divorce his wife and they talked about their future and plans to travel to different places.

Ms X moved into her parents' house in Town A following her firing and continued exchanging conversations and emails with Dr. Gale. She had been referred by Dr. Gale to an ophthalmologist in the Town C area and was no longer a patient of Dr. Gale.

Sometime after Ms X had left the Gale household, she stated that Mrs. V had left a Facebook message for Mr. B regarding Ms X. He then called Ms X to ask about this message and Ms X told him about the affair. She did not know if Mrs. V knew about it at that time and wanted him to hear it from her first, rather than from Mrs. V.

Ms X testified that Dr. Gale told her they would get a condominium together, but only after one year had passed after her referral to another ophthalmologist (this occurred on June 12, 2008 at her last medical visit). She said that Dr. Gale told her that they could not have an open relationship for one year so that he would not get in trouble with the College.

She continued to have constant conversations with Ms F, who she stated was sympathetic to her because she (Ms X) had been fired unreasonably.

In cross-examination, Ms X was shown a shredded book (exhibit 33) by a Dr. Atkins, which had been mailed back to Mrs. V. Ms X stated she did not have any knowledge of this book, and insisted she would never have had this book as, due to her diabetes, she could never follow an Atkins diet. (Ms F testified that the book which belonged to Mrs. V had been given to Ms X and Ms X had told her she was going to shred and mail it). Ms X said she didn't remember telling Ms F she was going to shred and mail the book to Mrs. V.

Ms X knew that Dr. Gale was to attend a family reunion in Town E over the long weekend of June 28 to July 1, 2008, while his wife was in Las Vegas with her mother. Dr. Gale was going to be in Town E with his two children and Ms F. She arranged for her parents to be away from their house, and the plan with Dr. Gale was that he would leave the boys after they went to bed and come to see her. According to Ms X's testimony, Ms F was aware of this plan. Ms X stated that Dr. Gale would go to the casino to withdraw money from a cash machine so that he would have a cover were Mrs. V to question his whereabouts.

According to her testimony in cross-examination and referring to her calendar, he came to her parents' home on the Saturday night (June 28), stayed the entire night and they engaged in sexual relations. The arrangement with Dr. Gale so Ms F would not be aware of their sexual relations was that Ms X would call Ms F in the morning and explain that Dr. Gale had spent the night because he had drank too much but he was on his way back. She testified that Dr. Gale left around 7:00 to 7:30 a.m. and that Dr. Gale had her call Ms F after that. In re-examination, when shown the emails with Ms G and a phone bill showing she had called Ms F on Tuesday, July 1, she stated that she had her dates wrong in the calendar which she had prepared in November 2008 from memory and that Dr. Gale must have come to her parents' home in Town A on Monday, June 30. Ms X agreed that she emailed Ms G before calling Ms F. Ms X testified that Ms G knew everything about her relationship with Dr. Gale and that she emailed her right after Dr. Gale left.

Ms X testified that Dr. Gale would call her from his office at the end of his day and they also communicated daily by email.

On the weekend of July 11, 2008, when Ms X was visiting Ms F at her parents' farm in Town J, Ms X, Ms F and Dr. Gale arranged to meet at an Indigo Chapters store coffee shop in Town B on Tuesday, July 15. They met, and during coffee, Ms X and Dr. Gale went off behind some book shelves, where they kissed. As they departed, by the car, Dr. Gale kissed her on the lips, which shocked Ms F.

Dr. Gale called the next morning and said he wanted to see her. He was upset as he had contacted a divorce lawyer and it was going to cost him \$64,000 a month for child support. They arranged to meet for lunch at his office. She was running late, so she stopped to pick up a

favourite take out for him and met him in his office at the hospital. He discussed with her that he had spoken to his divorce lawyer, who had told him how expensive a divorce would be and he was not sure he could do it. She told him that the money didn't matter to her. She stated he tried to take off her blouse, but she refused.

On cross-examination, it was put to Ms X that Dr. Gale was going to testify that Ms X had asked him for \$50,000 as a severance payment at the meeting in his office. Ms X denied that any such conversation ever took place.

In mid-August, 2008, Ms X stated that she received an email from Dr. Gale to the effect that he was staying with his family, that he loved his wife and loved his children and thanked her for her friendship. He told her that he could not see or talk to her anymore and that it was time to pick up and move on. She was upset and reviewed the things he had said to her. She emailed him but did not get a response. She was hurt and felt used. She testified she thought he loved her and she needed to have closure.

Near the end of August 2008, she called Ms F and told her about the sexual relationship with Dr. Gale. Ms X testified that she assumed that Ms F was upset at not having been told earlier. The result was that Ms F cut off all communication with her, "de-friended" her on Facebook, and no longer would receive emails, phone calls or chat messages from her. Ms X was shocked and upset by these events.

Ms X stated that she had exchanged many emails with Dr. Gale. Following the end of the affair, she attempted to print them out so as to prove the relationship as she was thinking of going to the College to complain. On noting that the paper in the printer was legal-sized, and the emails were short she only printed out two or three of them and put them in the garbage, planning on printing them all out when she had purchased regular paper. When she had done so and returned to print out the emails, her email account had been shut down and her emails lost.

She called Mr. B and he referred her to the e-mail company's legal department and advised her to hire a lawyer. She testified that she hired a lawyer and contacted the e-mail company who stated they could do nothing for her. No way was found to recover the emails.

b) Mr. A

Mr. A is the father of Ms X. He stated that somewhere around September and October 2008, while separating the garbage from the recycling, he found two or three emails on legal sized paper from Dr. Gale to his daughter. He read them out of curiosity, knowing his daughter would be upset were she to know. He remembers that the content was sexual, mentioned how much he missed her and wanted to be alone with her again and mentioned her “boobs”. He stated that at the time he read them, his knowledge of the relationship between Dr. Gale and Ms X was that they had had an affair and broken up. He very seldom talked to his daughter about such issues as she was closer to her mother in this regard. He remembered that she had wanted time alone with Dr. Gale, and he thought that it was the Labour Day weekend in September that he and his wife left the home so that Dr. Gale and Ms X could be alone. He did know of the hot tub. In reference to the emails, he thought there were three, all from Dr. Gale, and each was approximately eight lines long. He did not keep them, as he knew his daughter would be upset were he to do so.

He stated there was to a degree a thought in his mind that if they were to end up together, Dr. Gale would take care of her instead of he and his wife and that would be nice.

c) Mr. B

Mr. B graduated in computer science from University I in 2006, worked at University J for two years, and then accepted a position with Company S in Town F. He met Ms X in May 2006 and they broke up in May 2008. He subsequently became engaged to a different person, and his last communication with Ms X was in 2009.

Prior to Ms X meeting Dr. Gale, he had moved to Town F with a plan that Ms X would visit him there, obtain a job as a nanny, and would move there. They broke up in May 2008 on her last visit to [state where Mr. B lived]. He knew that she was a patient of Dr. Gale, and a live-in nanny for the Gales. Ms X told him that Dr. Gale required some form of ethical approval to hire her, and he assumed that meant from the hospital.

Mr. B spent Christmas 2007 in Town B, staying a couple of nights at the Gales, where he slept with Ms X in her room, and a couple of nights at his parents. He met the entire family during that

Christmas and exchanged gifts with the Gales. The Gales gave Ms X a robotic monkey. They gave him a statue of a peacock called “sparkle cock”, the nickname that Ms X had given him, although he was not completely sure if this gift came from Ms X or the Gales. In either case, Mr. B was sure the Gales were in on the “joke”. He described the atmosphere of the house as friendly and informal, and described Dr. Gale as “immature” and flirtatious in his relationships to Ms X and, to some degree, with Ms F. Dr. Gale appeared to be close with Ms X, making jokes with sexual innuendo in front of all, for example, referring to her as his “NILF”. He explained that this is derived from the original, more widely used in some social circles, acronym “MILF”, originally used in the film American Pie. It stands for “mom I’d like to fuck” and is used to describe attractive older women. When Dr. Gale applied it to Ms X in its NILF form, it stood for “nanny I’d like to fuck.” Mr. B first heard this at breakfast with all present including Mrs. V and Ms F. He was taken aback, surprised at how informal it all was, but he noted Mrs. V’s response was laughter. He understood that the MILF descriptor was originally directed at Mrs. V by a physician trainee during a hospital party at the Gales’. He also heard Dr. Gale refer to Ms X’s mother as a “GILF” (“grandmother I’d like to fuck”).

Mr. B stated that he remembered one occasion where Ms X, Dr. Gale, and he smoked “weed” together in the garage. Mrs. V, while not joining them, was aware of the activity. (In a previous interview with a College investigator, Mr. B had stated that Mrs. V was with them while they smoked.) He stated that this sticks out in his mind as it was a similar “blatant” example of the informal relationship of Dr. Gale with him and Ms X. At the time this occurred, he thought it was inappropriate, but it did not particularly bother him.

He thought, in sum, that the employer-employee relationships of the Gales with Ms X were surprisingly close and informal.

Mr. B’s relationship with Ms X ended during her last visit to see him in [state where Mr. B lived]. She wanted him to return to Canada as she could not keep up a distant relationship. He was unaware at this time of any alleged sexual relationship between Dr. Gale and Ms X. His next contact with her was by phone, when she told him about the ongoing crisis, and that she had been fired because a neighbour of Mrs. V was accusing her of breaking up the marriage. She told him at that time that Mrs. V was on the warpath and accusing her of trying to steal her husband. She told him that this accusation was false and he believed her.

On September 8, 2008, he received a Facebook message from Mrs. V, which surprised him as there was no previous communication with her. Her question at that time concerned timelines and Ms X, but he did not respond to her. He contacted Ms X, and she “confessed” that she had lied to him about her relationship because she had in fact had an affair with Dr. Gale. Mr. B stated that he was upset and angry that she had lied to him.

Ms X contacted him once more, in 2009, concerning emails which proved her relationship with Dr. Gale, and which had been deleted, asking if he could help her recover them. He followed company policy and directed her to public information sites and told her to get a lawyer.

After the ending of the relationship, his only other contact with Ms X’s family was a call from Mrs. D who had seen photos of him online with a woman and demanded to know whether he still had feelings for her daughter. He found this strange.

d) Mr. C

Mr. C is the manager of Public and Physician Advisory Services (PPAS) of the CPSO. This department manages phone inquiries from the public and physicians. He described how the system works, and the protocols that govern specifically the advisors’ replies to queries. He stated that all calls that have a name attached to them are documented, while anonymous calls are not documented unless “extraordinary”. Calls concerning possible employment of a patient by a physician are not frequent or complex calls. He testified that based on his understanding of the training of advisors and the College policies, an advisor would never advise a physician to hire a patient as an employee or nanny. Mr. C referred to the College Policy on Treating Self and Family Members. As to why such a policy would have relevance as a basis for advice in the circumstances, he stated that the policy addressed physicians treating those with whom they have an emotional and psychological family-like relationship. The principle is that the existence of the relationship affects the physician’s ability to provide objective care. He did not believe that a question concerning hiring a nanny would be any different than any other situation where a doctor might inquire about hiring a patient as an employee. There were no records concerning any phone calls by Dr. or Mrs. V.

The Committee accepted Mr. C's evidence as an accurate representation of how the College responds to inquiries regarding hiring a patient. His evidence made sense, was given in a clear manner and is consistent with College Policy (exhibit 19). Aspects of his evidence were contradicted by the evidence of Mrs. V and this will be discussed further in our reasons.

e) Mrs. D

Mrs. D is the mother of Ms X. She lives in Town A with her husband and her older daughter, and presently with Ms X. She makes dolls as an "art" and is still working at this time. She first met Dr. Gale in the fall of 2007.

While Ms X was working for the Gales, Mrs. D testified that she had stayed over at the Gales four or five times. She found the atmosphere in the household fun, the boys were affectionate and Dr. Gale was always joking. She described Dr. Gale as absolutely charming, charismatic and funny. She felt sorry for Mrs. V who was not very happy, was sick physically and maybe mentally as well. She described the first time she came with her daughter to the Gales. Finding the door locked, Mrs. V responded to the knocking and said to her "that would be my idiot husband" and stomped away. This left Mrs. D shocked.

As an example of Dr. Gale's type of humour, she referred to an incident when Ms X was in bed not feeling well and Dr. Gale was sitting at her computer chatting via computer with Ms X's sister, but communicating as if he was Ms X. He typed in that she (Ms X) was doing better because Jeff was home. Ms X's sister then caught on to the "joke." His jokes could be inappropriate, often with sexual innuendo, but they did not offend her. She knew that her nickname was "GILF". This term was used while Mrs. V was present and did not appear to faze her. Dr. Gale had sent her a Valentines card addressed that way (Exhibit 21). The card was a paper doll, meant to depict Dr. Gale in his hospital scrubs. When the pants on the doll were pulled down, an erect penis would spring out.

Up until June 2008, she saw her daughter and Dr. Gale as best friends, really close like brother and sister. At one point, she asked Mrs. V if they appeared too close. Mrs. V responded that he was like a big brother. She thought that if she had a nanny, she would not let her get that close to her husband, especially if he was her doctor.

Mrs. D testified she discussed with Dr. Gale that he was too close, and whether it would be better for her daughter to have a different doctor in Town C or Town G, but he said he could do better surgery than anyone, with one hand behind his back, other than Dr. R, who was his teacher. She trusted him to do the right thing even though there remained a little doubt in the back of her mind.

Mrs. D was shown the doll that she had made for Dr. Gale as a Christmas present. She stated she makes them on a routine basis, they are an art form rather than craft and they are reflective of the person for whom they are meant for. The rag doll was in his likeness, with hospital scrubs, hairy chest, glasses, cloth penis (non-erect) and purple testicles that would be apparent on removing the scrubs. None of the dolls she had made before had a penis, but it was definitely geared toward what she thought Dr. Gale would find funny, in light of his inappropriate jokes around sex. She thought the doll she made was an “art doll” but said that the GILF card Dr. Gale and Ms X had made for her was “over the line”.

Mrs. D described her home as having dolls everywhere, including a garden of old Barbie dolls which were painted with nail polish and put in the garden so they were peeking out among the flowers and were really cute.

While the Gale family and Ms F and her daughter were all on vacation in Florida, Mrs. D talked with Dr. Gale by phone concerning her daughter’s eye issues. She said she did not recall Dr. Gale offering to send her daughter back for treatment.

On the night prior to her daughter’s surgery (June 2), she testified that she thought that Ms F was there and that they were all hanging around in the garage smoking. Dr. Gale and Ms X had a hot tub together at around 10:00 p.m. while Ms F and Mrs. V were still around. She thought Ms F left and took Ms X’s car. She testified that Ms F was living with her boyfriend at the time. She was not aware that Ms F was living at the Gales at the time and testified that she did not see her personal belongings there.

She and her daughter went to sleep in her basement room around midnight. She thought at 1:00 a.m. or so Dr. Gale came down and said he couldn’t sleep and the baby was sick. At that point, Mrs. D suggested that Dr. Gale sleep downstairs and that she would sleep on the sofa in the next room. Dr. Gale said no that Mrs. V needed help. Mrs. D said she would go upstairs. Mrs. D

testified that at that point, Ms X asked “do I have to leave too” and Dr. Gale said no just to go to sleep. So Mrs. D went upstairs to be with Mrs. V who was in the kitchen with the baby in a high chair giving him food. Then she went upstairs with the baby into the master bedroom, and a half an hour later Mrs. V came up to bed. Then Mrs. D went into XYZ’s room to sleep by herself.

The fact that Dr. Gale slept in the same bed with her daughter did not faze her, as she thought they were best of friends and spent so much time together. Ms X’s bedroom had lost intimacy as they had hung out there. Her concern was that he should have enough sleep prior to surgery. She did not think it fazed Mrs. V either. Upon wakening in the morning, she went to the Gales’ bedroom door and said jokingly to Mrs. V “[Mrs. V’s first name], you have got to go and wake up your husband and get him out of my daughter’s bed.” Mrs. V responded that it would be a good statement on her Facebook page. Mrs. V went down to wake Dr. Gale up while Mrs. D took care of the baby.

She testified that the morning of the surgery, she, Dr. Gale, Mrs. V, Ms X, and the children were present in the Gale home. Mrs. D had to look after XYZ when Mrs. V would take QRS to school. That was one of the reasons that Dr. Gale drove her daughter to the hospital that morning (she was his first surgery). Later that day, XYZ went to daycare.

It was suggested to Mrs. D in cross examination that Ms F would testify that she had slept in XYZ's room the night before the surgery and, by implication, that Mrs. D had not done so. Mrs. D responded that if Ms F testified to that effect, she would be lying. It was not suggested to Mrs. D that Dr. Gale had not come down in the middle of the night and slept in her daughter's bed. What was suggested to her was that she should have told Dr. Gale to sleep in the basement by himself and that Ms X and Mrs. D could have slept upstairs. She was asked why she didn't think of that and why “warning bells” were not going off with her when Dr. Gale sought to sleep in her daughter's bed. It was suggested to her that perhaps there was really nothing wrong with this situation of having Dr. Gale sleep in her daughter's bed.

Following the surgery, Mrs. D filled her daughter’s prescription for 30 Percocet after dropping her at the Gales’ home. Ms X said they were too strong. Mrs. D stated that Mrs. V took the medication from her, put the pills on a desk, and they were not found again.

Later that day, when Dr. Gale returned home from the hospital, when they were in the family room, he put his head on Mrs. D's shoulder, snuggled her and said this was the worst day of his life and he had never had to do surgery on someone he loved before. She was not challenged in cross-examination on this point other than to note that when he said he loved her daughter, she did not consider that to be a statement that he was professing romantic love for her daughter.

Mrs. D was horrified and upset about his statement about doing surgery on someone he loved and it being the worst day of his life because she took that to mean that he had jeopardized her daughter's eyes. She thought to herself "you bastard", but as she was in his house eating his food and he was caring for her daughter, she could not tell him how she felt.

Before leaving the Gale home after the surgery, Mrs. D described having conversations with Ms E and Ms F in the garage about Mrs. V's drug abuse and eating disorder and that she was just so unhappy. She was sharp with everyone. Dr. Gale was very patient with her. On leaving, she asked them what would happen to Dr. Gale and the kids if he were to split up with Mrs. V, and Ms F had said that if they split up, he would marry Ms X, as he absolutely adored her. She responded "[Ms F's first name] don't say that."

Mrs. D returned to Town B to pick her daughter up from the Gale residence about five to seven days after her daughter was fired. She was not asked to come earlier. Ms X and Ms F were there and Ms E and Dr. Gale arrived later. Mrs. D spoke with Dr. Gale and he told her that he loved her daughter and that he would do nothing to hurt her. He said he was going to leave his wife. He talked about his wife's illness and her inability to care for the children and that he just could not deal with it anymore. He said he still expected Ms X to be his nanny but they could not be together for a year. It was not suggested in cross examination that Dr. Gale had not said these things to Mrs. D.

Mrs. D testified that Dr. Gale and Ms F wanted them to stay but Ms E was saying they had to leave. When Ms E said they had to leave as they were upsetting Dr. Gale and he did not respond, Mrs. D realized that they had no idea what was going on and that Dr. Gale was giving them completely different stories. When Dr. Gale did not speak up, she decided to leave. When they left, Ms F was crying in the driveway and Dr. Gale came and said to Mrs. D that "you sent me a

beautiful girl and I am returning her damaged, I am so sorry". Again, she was not challenged on this evidence.

Mrs. D testified that at that time, she had not known about sexual relations between them. She stated that she did not believe in adultery nor was she happy that her daughter was involved with a married man. However, when she looked at the bigger picture and the children, she thought they would be better with Ms X. She also had some thoughts that as her daughter was involved with someone in the medical profession, it would be nice for Ms X.

Following their return to Town A after the firing, Dr. Gale phoned at his breaks and in the evening and at other times. Mrs. D would also call him. She specifically called him on the occasion when Ms X was sick and throwing up, and he advised taking her to a hospital in Town A, and apparently called the ER during her admission.

When he called, Mrs. D would speak to him before passing the call on to her daughter. She remembered talking with him about Dr. Gale saying that Mrs. V had threatened him by saying she would report allegedly fraudulent activities by him and that he would in that case go to jail. He mentioned going to his psychiatrist friend who told him to get a Town C divorce lawyer. She was not cross-examined on this evidence.

Mrs. D stated that she and Mr. A spent the long weekend in July in Town H on Lake I because Dr. Gale was coming, and she decided to give him and her daughter some time alone; she confirmed this with Dr. Gale who called her from Town E on the day she and her husband left. She was away at least two nights and maybe the Monday of the long weekend as well. She stated that Ms F knew that Dr. Gale was coming to visit her daughter and that Ms F told Mrs. D that Dr. Gale should go to the casino to get money at an ATM so if he was ever asked where he had gone, he could say truthfully that he was at the casino. "I am smart that way," Ms F stated to Mrs. D. Mrs. D was not cross-examined on this evidence.

Mrs. D testified that she knew that Dr. Gale sent Ms X many emails, and she read one which talked about his inability to deal with his wife's mental illness, and how much happier he was with Ms X. She also remembered reading an email sent to her daughter at the end of the relationship which came "out of the blue", which stated that of course he was staying with his wife and boys, and thanked her for being his friend. Her reaction was that his lawyer must have

written the letter, as it was so cold, denying anything other than friendship. Her daughter was devastated. She was not challenged in cross-examination on her evidence concerning these two emails.

Her daughter had informed her that she had sent an email to Dr. Gale which was a copy of all the things he had said to her. Ms X had meant to print these, but the printer was not working, and only printed partial emails. By the time they obtained a new printer, all her emails had been erased. She thought she called Mr. B and asked him what to do. He advised calling the legal department at the email company and they advised contacting a lawyer. Mrs. D then hired a lawyer in an attempt to recover the lost emails. In speculating as to the loss of the emails, she recounted that Ms F had told her that she once got back at her brother's ex-girlfriend by hacking into a computer and removing her thesis.

f) Dr. Jeffrey Gale

Dr. Gale is an ophthalmologist with a special interest in retinopathy and specifically vitreous retinal surgery. He is an assistant professor at University J and the sole teacher of this field there. At the time of the events in question, he was 38 years old. He described his work schedule on most days beginning at 7:00 a.m., home on Monday, Wednesday and Friday by 7:00 to 7:30 p.m., and working on Tuesday and Thursday in the operating room until 5:00 or 6:00 p.m. He was married in 1999 and, for both he and his wife, it is their only marriage. They have known each other since high school.

Dr. Gale stated he first saw Ms X in January 2007 when she was referred from a Town A ophthalmologist. Dr. Gale felt that her eyes had been under-treated at that time and that she required a laser injection and was likely to need surgery, including treatment of a cataract. On her first visit, he proposed pan retinal photocoagulation but did not do any treatment that day as she was crying and wished to postpone laser treatment. She did not return until six months later, although he would have expected to follow up in six weeks. During that second appointment in June, they agreed to proceed with pan retinal photocoagulation. It was his memory that this was the visit in which she was crying and discussed her boyfriend leaving for [state in United States]. He remembered asking her at this time if she knew any nannies. She told him that she didn't know anyone but would keep this need in mind. At a later appointment, Ms X inquired if they

had filled the nanny position and he said they had not. He arranged an interview by giving Ms X his wife's phone number.

Following being hired, Ms X worked casual hours over the summer of 2007. By Labour Day, the family had no concerns with increasing her time other than to be sure that as she was Dr. Gale's patient, the CPSO would agree to her being full time. It was his understanding that his wife called the CPSO and was told it was acceptable, and therefore she was offered full-time employment. At that time, she lived in an apartment that she had shared with Mr. B, but moved into a rooming house and stayed there a few months. One day when Mrs. V dropped her off there, Mrs. V was shocked by the living conditions, said she couldn't let her live like that, and suggested that Ms X could move in with them; within a few days this happened.

Dr. Gale characterized the atmosphere at home as a "fun place to be, casual, relaxed". He stated that while at work he was professional, "home was a fun place with a lot of happiness".

Ms X received multiple laser treatments, injections and surgeries. Dr. Gale utilized injected medications which were not covered by provincial insurance whose costs could range from \$200 to \$1800 per injection. The costs were absorbed by his medical corporation as she had become the family nanny, could not afford the cost, and in his clinical judgment, this medication was superior to the insurance-covered alternative.

Dr. Gale agreed with previous testimony, especially that of Mr. B, that he had an immature sense of humour and there were playful "jabs" at each other, never angry, but fun and pretty immature.

When he was shown the "GILF" card by his lawyer after it was produced to his lawyer mid-hearing by the College which had just received it from Mrs. D, he said he had never seen it before and that position was conveyed to the College. In his testimony shortly thereafter, he stated that when he first saw it, he did not recognize it as it was not something that he felt he would have done. He ultimately admitted that he had made the card with Ms X. He vaguely remembered sitting around and cutting and pasting, laughing about making something with Ms X for her mother. He stated that the card was tasteless and immature, and that he was "absolutely mortified that [he] made this"; further, he expressed his apology. He said that part of the humour he used was sexualized humour and that was how he viewed the GILF card.

Dr. Gale characterized his relationship with Ms X in the home as a friendship. They watched TV together, they all took all their meals together, and she was taken out to family functions and integrated as part of the family. They would watch shows that his wife did not like, such as South Park. She would also be present if he were playing video games. He characterized the hot tub as commonly used by all in the household. There was a lot of hot tubbing with neighbours, Ms F, Ms E, Mr. B when he was visiting, Mrs. D and Ms X. It was definitely not a routine with Ms X, but a couple of times they might have been together alone. "We did not routinely set out to take hot tubs together." He agreed that at a Christmas party one of the residents at the hospital jokingly told him that Mrs. V was a real "MILF". He told her and they laughed about it. He said that Ms X had said that if Mrs. V gets to be a MILF, then I get to be a NILF and my mom is a GILF. These remarks were teasing, certainly not for literal interpretation.

Dr. Gale said he did not believe that he referred to Ms X as a NILF but said it was possible that he might have.

Dr. Gale denied having or using marijuana. He agreed that it was definitely possible that he had been in the garage with Ms X while Mr. B was stoned or high but he was definitely not smoking with them.

Dr. Gale stated that he definitely had discussed with Ms X the transfer of her care to another ophthalmologist. He discussed this on more than one occasion, and especially immediately after hiring. It would be inconvenient for her, which was why she was referred to him in the first place. When the family was in Florida, he had offered to fly her home to be seen urgently in Town C, but she wanted to stay with him at his clinic in Town B.

The Florida trip was a longstanding planned graduation present for Ms F. They took Ms X because she was Ms F's friend, would assist in childcare, and it would be rude not to take her. They rented a luxurious condo with hot tub and five bedrooms for two weeks. There were pre-purchased tickets and each girl was given \$250 US personal spending money. The first three or four days were fine until Ms X's sudden loss of vision in her good eye. She became upset and quite depressed, spent a lot of time in her room, and was on the phone several times with her mother and with Mr. B. She didn't take meals with the family at that point, and that was when Dr. Gale made the offer to send her back. She was quite upset that her apparent need for surgery

at that time might mean she would not be able to go to [state in United States] to visit Mr. B. Dr. Gale denied that on their last night in Florida, they had been in the pool and that he undid the top of her bikini. He stated they were all packing and there was no time to be in the pool. "It simply did not happen".

When they returned to Town B on May 10, Ms F had a fight with her boyfriend and she moved into their home the day after the return from Florida, moving in to XYZ's bedroom as XYZ slept with them in the master bedroom. Dr. Gale said she continued to live in the home until the end of the summer of 2008.

Dr. Gale denied that on May 13, he had gone down to Ms X's room and engaged in touching and kissing and oral sex.

He denied ever having sex with Ms X in his office or anywhere.

Ms X's ophthalmology visits were scheduled so that his wife would be able to drive her to and from the hospital, as she could not drive home alone post dilation.

Dr. Gale described Mrs. V as a great mother at all times and while physically sick, he never doubted her love and affection for their children; additionally, he asserted that Mrs. V had done nothing but good for Ms X.

Dr. Gale described Ms F and Ms X as "two peas in a pod", who got along together very well. Ms F did most of the childcare while they were at a conference in the US from May 15 to 20.

On their return, Ms X went to [the state where Mr. B. lived]. She came back just before her major surgery, with her mother, Mrs. D, who also stayed in the family home the night before surgery. He denied sleeping with Ms X in her bed, the night before surgery, and stated that he spent that night with his wife and XYZ. As to the possibility that his sleep would be interrupted by XYZ, he testified "I can sleep through anything." He said the surgery went fine, was most straightforward and he did see her later that day as he had gotten a call from Mrs. V that Ms X had developed pain in her eye. It was a minor issue of the eye lid opening under the patch and was readily taken care of. He denied that he would ever have told Ms X to abstain from sex for six weeks as he never told his patients to abstain from sex after surgery.

Concerning the firing of Ms X, Dr. Gale testified that he and his wife had been planning construction of a larger home. They were to break ground on June 6. On that day, he told Mrs. V that they could not build the new house, as it was not financially possible. There was a big fight not only about cancelling but because he had asked Mrs. V to do all the work of the cancellation. She told him that it was up to him to do that, she became very angry, stated that she needed time to cool off, and left him to sort out the mess. He hadn't thought she would really leave but she did go to the Bahamas, as he found out from Ms F and Ms H. On the next day, Saturday, his wife called from the Bahamas and told him to fire Ms X because she had found out from Ms H that she had been saying unflattering things about her illness and incapability with the children. Dr. Gale did so, as requested, immediately after the call, explaining it was because of what Ms X said to Ms H. Ms X denied that she had criticized Mrs. V behind her back, and said that Ms H was making it up. Furthermore, she could not be expected to just leave immediately. He told Ms F that she would have to watch the children. Ms F was upset almost as much as Ms X and both were crying. Ms X moved out the following Thursday, having told her mother not to drop everything. Dr. Gale denied that at any time during that week that Ms F had taken the kids away overnight leaving him and Ms X alone. He denied ever suggesting that they would share a new condo, or discussed living with her. He said that he had a migraine on the Monday and Tuesday after Mrs. V left. He denied that there was any sex on that day or the subsequent days. He acknowledged that the home was in "turmoil" at this time.

Dr. Gale last saw Ms X as a patient postoperatively on June 12, and referred her to Dr. R. He stated that before she left, he wished her luck.

He denied having had conversations with Mrs. D concerning loving her daughter. He noted that while Mrs. D may have had some wine while visiting at the Gales, he did not, as he does not drink wine and it causes him to have migraines.

Dr. Gale had subsequent communication with Ms X when he received messages via voicemail, and one phone call from Mrs. D concerning a health issue Ms X was having; he referred her to the local emergency room. He later received a call that Ms X had been admitted with pyelonephritis and was sad and feeling very lonely. He spoke to the admitting physician about her. He asked his secretary to send her flowers with an enclosed message concerning "bloodthirsty gnomes", which was part of a running joke that there was a market for creepy

garden gnomes, and he used to call them bloodthirsty gnomes. He would have expected QRS and Ms X to understand.

His next meeting with Ms X was after Ms F texted him, and indicated she would like to meet for coffee at the Chapters in Town B. He went over to Chapters around 4:00 or 4:30 p.m. This was at a time when QRS was in hospital with meningitis. Both Ms F and Ms X were there. They sat in the coffee bar. Most of the discussion was concerning QRS and lasted about one hour. He denied being alone with Ms X or kissing her.

The following day, his secretary informed him that Ms X was in the office with a lunch. He saw her in his office. She asked about QRS and then about her record of employment which marked her as fired. He told her it was the decision of his wife and accountant but he would look into it. She became angry at Mrs. V, and because she was not being allowed to see QRS at the hospital; she also raised the issue that her severance pay was not enough. He again said that was between his wife and the accountant. She said it was always Mrs. V, and how was she to survive on \$1000. She said she wanted \$50,000 for being “wrongfully fired” and at that point, he told her there was no way to give her \$50,000. She said that Mrs. V spends more than that shopping. He refused to agree to the demand, and asked her to leave.

On the long weekend in July 2008, while his wife was away on vacation, Dr. Gale attended a family reunion in Town E with his two children, and Ms F accompanied them. They stayed at the hotel from the Friday to the Monday. The room had been booked by his wife, and all four stayed in the same room. He denied seeing Ms X at any time during that weekend.

Dr. Gale acknowledged that he had communicated with Ms X via email prior to the office confrontation. He said that he did not “recall anything sexual or untoward” in the emails. He said that Ms X may have talked about her “boobs” in an email as “she loved” to talk about her “boobs”. Ms X made a request for a reference, and he directed her to look elsewhere.

Dr. Gale was questioned about distinctive physical attributes, and he described a “third nipple” which he was sensitive about, and that he always wore a shirt in public; he stated that although Ms X had in her testimony denied she had seen this, if they had been that close, she would not have been able to miss it. As well, there was a description and a picture of a scar on his left abdomen from an adolescent burn (and this had not been mentioned in Ms X’s testimony).

Dr. Gale testified that he had taken the CPSO Boundaries course after the lodging of the complaint because he felt a lot of this could have been avoided. He believes he learned a lot at that session and agreed with the proposition that physicians are responsible for boundaries and when boundaries blur, they can compromise medical care. He denied ever knowing anything about a one-year rule concerning sexual contact with a former patient.

When Ms X moved into the basement in November 2007, she had her own phone line, and it was a private area. Dr. Gale had no recollection of ever sitting at her computer and never remembers ever being in her room and joking around there. Time was spent with Ms X in the adjacent home theatre room, or upstairs. Her privacy was always respected. He sometimes would smoke cigarettes in the garage with her, although never marijuana. He knew that she smoked marijuana and as long as it was after her hours were finished and not in the house, it would not have been a big deal to him.

Dr. Gale agreed that he shared some information concerning his wife's condition with Ms X. He stated that Ms X had lied to the Panel in stating he had told her about Mrs. V having an affair. He had never contemplated leaving her, and he had never seen a divorce lawyer.

Dr. Gale denied spending any time having sex with Ms X after Mrs. V left for the Bahamas, and stated that Ms F took care of the children during that period. Ms F had not gone to Town J on that weekend and he had a migraine headache on the Monday and Tuesday. He had asked Ms X to leave right after the firing, but her mother could not come for her and he accepted that. Dr. Gale made no mention of Ms E being there during this time period (June 9 to 11) except that he said she was there on June 12.

Dr. Gale stated he no longer had any emails between them on his computer. He testified that there had been emails but that they were "automatically deleted" or that he manually deleted them as a matter of course.

Dr. Gale denied that he was attempting to portray Ms X as "trashy" by having her Facebook page entered as an exhibit, although he did believe that the references therein were tasteless, immature and crude. He agreed he wanted the Panel to know that she regularly flashed her breasts and that this was tasteless, and that she referred to herself as a "NILF" and her mother as a "GILF". In

reference to the doll given to him by her mother, he did not think it was vulgar, and while tasteless, not that bad. It was in “South Park” style.

g) Ms E

Ms E is a Montessori teacher. A sole support parent, she worked for the Gales part-time as a babysitter during the school year and full-time in the summer. She first met the Gales while she was an administrator at the Montessori school the Gales’ child attended. In describing Mrs. V, who was both an employer and friend, Ms E noted she sometimes might spend up to three hours in [a room in the house] and that the children knew that “mommy was sick sometimes”; they were able to go and visit her when she was in [a room in the house]. She described the children as high maintenance, having had the luxury of people at their beck and call.

Ms E described the Gale home as casual and friendly; she stated that the hot tub was used by all. To her knowledge, Ms X and Dr. Gale were never alone in the tub. Additionally, the home theatre was used by everybody, and XYZ had toys in that room. Ms E never used marijuana, nor had she ever seen Dr. Gale use it. There were times when Ms X was using marijuana while on duty, and in such instances, Ms E would tell her to go to her room, and would cover for her. She stated that Ms X was sexually inappropriate in respect to the children and would flash her breasts while the children were present.

Concerning the alleged incident with the hanging of a Barbie doll, her knowledge came from QRS telling her that you could hang Barbies. Ms E spoke to Ms X about it not being acceptable to hurt women. Ms X thought it was funny, but Ms E could not grasp the humour involved in that. Ms X had told her that she had Barbies herself and ‘hurt’ them as a kid. QRS had also told Ms E about Ms X’s “Barbie graveyard”.

Ms E told the College that she did not remember Ms F moving into the Gale house but testified at the hearing that “Oh, maybe. She broke up with her boyfriend. Yes, there might have been a duration of time that she was there.”

Ms E did not know about Mrs. V leaving for the Bahamas until two days after the departure. She stated Ms X was in tears considering the firing unfair, partially blaming her - Ms E - for making her look poorly. Ms X was calling Mrs. V a “bitch” and was “going to take her down.”

Based on the situation at the Gale household, Ms E decided to stay there on Monday, Tuesday and Wednesday (June 9 to 11, 2008). She said Ms F was there as well. She said she helped care for the children, as Dr. Gale was in bed with a migraine, also visiting his bedroom to clean up the “vomit bucket.” Ms E returned to her own work on Thursday, but came back to the Gale residence in the evening.

Mrs. D had meanwhile arrived to pick up her daughter. Mrs. D was putting down Mrs. V in front of the children and had begun drinking wine. Ultimately, Mrs. D stopped drinking and later that evening, they were able to leave.

Ms E did communicate with Ms X thereafter via Facebook and referred her to a “hypnotherapist” for counselling and did receive a thank you reply. She also had offered to supply a reference for her.

Ms E described Mrs. V as the primary care-giver of the children, who was methodical, rational and able to plan all travel details. While physically sick, she was not emotionally sick. She denied there would be any reason to contact Children’s Aid Society, and if there were, she would have been legally obligated to report it.

When Ms E talked to the College investigator, she felt she was not able to finish her thoughts in those interviews and that she did not share some of the things she testified to at the hearing. Presently, she still cares for the children on occasion.

h) Mrs. V

Mrs. V was in her late thirties at the time of the events under consideration, and had been with Dr. Gale since she was 17. They had been married in 1999. She worked as Dr. Gale’s office manager, working over 40 hours per week prior to the birth of her second son, and then reduced her hours to 30 to 35 a week. Most of the work was at the home office, but she was at the hospital one or two days a week.

Her general state of health is mediocre due to [a medical condition]. She has been ill since her mid-teens, and became more severely ill after the birth of her first child. Her health affects her own and her family's daily lives, as she can have good and bad days. She does not have an eating disorder, nor does she abuse medications. She denied any drug-seeking behaviour.

Regarding her relationship with her husband, Mrs. V described them as best friends, growing up together; there was nothing she would not trust him with. He was a protective and loving husband; there was never a period of separation or an extramarital affair.

Mrs. V thought Dr. Gale had given Ms X her phone number on their third appointment. She testified that she had checked with the CPSO if hiring Ms X was permissible, and was familiar with the College process, having checked with them before in another situation. She called as an office manager and talked for five minutes explaining he was an ophthalmologist and the patient would be a nanny, and inquired if there was any conflict. She was told they did not see any problem.

Following driving Ms X home one night, and seeing that her place was disgusting and appeared to be unsafe, she offered her the basement room. Ms X jumped on it. She later used her van to help Ms X move. She thought it was acceptable to move her into the house until she told her husband, who was concerned about the change of the employment situation, and asked her to check again with the College. She testified that she made a further call to the College when Ms X moved and became a live-in nanny. She spoke to a woman who said to go ahead and that she did not see a conflict.

It was not specifically suggested to Mrs. V in cross-examination that the calls with the College had not occurred but her attention was drawn to the fact that there was no record of her calls at the College and that Mrs. V had no record. The clear implication was that the calls had not occurred as Mrs. V said they had.

The relationship with Ms X working as a nanny worked fine for a couple of months, except for QRS thinking that Ms X hated him, having been told the only reason she would be nice to him was because she was paid to do so. She and Dr. Gale confronted Ms X, and with tears, Ms X stated she would try harder; subsequently, things improved.

Mrs. V's understanding was that Ms X described the Barbie doll cemetery to QRS as a way to get into his good graces. She said that Ms X had provided him with a Barbie doll and encouraged him to mutilate it, and later Mrs. V found the mutilated doll on the stairs outside his room, hanging by the neck. Mrs. V was disturbed, and discussed with QRS that this was unacceptable, while Ms X thought Mrs. V was over-reacting.

Another issue arose when Ms X picked QRS up from school, let him out of the car early and raced him home. Mrs. V testified that when she raised her concern about this that Ms X rolled her eyes.

Mrs. V thought that during the Florida trip, Ms X was angry rather than depressed because she might not be able to go to [state where Mr. B lived] due to her eye bleed. Ms X spent time locked in her room and refused an offer to be sent home. Mrs. V spoke with Ms X's mother about this as well. Ms X spoke also with her mother which Mrs. V described as a screaming match. She said that Mrs. D had told her daughter to grow up. Mrs. V testified that while in Florida, XYZ was to rotate among the three of them (Ms F, Ms X and the Gales). She went on to state that Ms X did not participate in the childcare.

On returning home from Florida, Ms F had a fight with her boyfriend and having no place to stay moved in with the Gales. She was to fill in as full time nanny when Ms X was in [state where Mr. B lived].

Mrs. V considered that it was a "ludicrous" notion that Dr. Gale could have gone to Ms X's room night after night, as he could not go downstairs without her being aware, since she is up to go to [a room in the house] at least three times a night. She also stated that the baby monitor did not work in the basement. Additionally, the intercom system was activated at night, and would have permitted her to hear them if they were downstairs.

Mrs. V was emphatic that the night before Ms X's surgery, Ms F had spent the night there, and anyone who says she didn't was a liar. She did not recall whether XYZ was sick and if he had been, Ms F was there to help. She testified that Dr. Gale slept with her and there was no way he was downstairs with Ms X. Mrs. V denied that she went downstairs to Ms X's room to wake her husband the morning of the surgery. Certainly, he and Ms X were not sleeping in the same bed. She was not cross-examined on this evidence but the fact that Ms X and Mrs. D had testified to

the above series of events on the night before the surgery was drawn to her attention by her own counsel.

When Ms X returned from surgery, she was in her room crying saying she was having pain and was inconsolable. She called Dr. Gale, then she and Mrs. D drove Ms X back to the hospital. Mrs. V denied any knowledge of the Percocet which was prescribed for Ms X after surgery.

When Mrs. V left for the Bahamas, Ms X was indisposed, Ms F was on payroll full-time, was living in the house, and was left in charge of the children. Her friend and neighbour, Ms H, drove her to the airport and told her the things that Ms X was saying behind her back about her. She stated she left for the Bahamas the next day from Town C at 6:25 a.m., and called her husband at 11:30 to tell him to get Ms X out of the house. He questioned the decision, it was repeated and he was not going to argue with her in the mood she was in.

Mrs. V identified the shredded Atkins book as the one she had lent to Ms X. It was a type of carbohydrate counting book, following up on the recommendation for Ms X from the hospital dietician. She believed Ms X intended it as a slap in the face.

Mrs. V testified that she booked the reservation in Town E for her husband and Ms F with the children for one room.

Mrs. V acknowledged that she had contacted Mr. B after the firing as Ms F told her that Ms X was “was going to take us down” and she wanted information as to what dates they had been in Cuba in order to have the information for the payroll record if they ever were sued for wrongful dismissal. (In other testimony, it was mentioned in passing that Ms X and Mr. B had taken a vacation in [the Caribbean]. The dates of this trip or it having any significance to the events in dispute were never noted. It is only mentioned here to give context to the testimony of Mr. B and Mrs. V and the exhibit of Mrs. V’s Facebook message to Mr. B.)

Mrs. V confirmed the distinctive physical attributes of her husband, including the third nipple, the scar on his abdomen, and additionally, that he had scars on his scrotum. She denied that he had his pubic hair trimmed.

Mrs. V testified that during the course of the College investigation, Mr. T, an investigator, had refused to go to Town B to interview her. She said she was told that she was the College's witness and therefore had to speak with the College. If she refused, she could be arrested. She had a lawyer prepare her written responses to a series of questions. She agreed that there were a few things that were not quite accurate but attributed them to miscommunication. Mrs. V had provided the College with more information than they had requested, including copies of Ms X's Facebook pages, in which she referred to herself as a "gold-digger" and a "slut". Her thought was Ms X had put it out there, and that it reflected on her character.

i) Ms F

Ms F is presently in her late twenties, married, with a young daughter, and living in Town K. She has a Bachelor's degree in Early Childhood Education and is now studying at University L.

Ms F first met the Gales while she was a waitress in a restaurant in Town B, began to babysit for them on occasion and then, after XYZ was born, more frequently. The older child was four when she began. She left Town B in September 2008, but still continued to occasionally babysit for the Gales; the last time she did so was in 2012.

Ms F described the Gales as generous, extremely funny people. She was "blown away" when she first drove up to their house. She was unaware Dr. Gale was a physician for the first year that she was babysitting. She was friends with both, but closer to Mrs. V, describing Mrs. V as great with kids.

Ms F was aware of Mrs. V's [medical condition], and that it was a daily struggle for her, that it caused her to be in [a room in the house] constantly. She was a "helicopter" parent, always in and out, and cuddling the boys. Ms F described her as the most rational of people, always planning, and stressed out when plans were not working perfectly. Mrs. V struggled a lot with pain, but was overall a happy person. She always thought that Mrs. V took proper steps to have care for the children when she could not do so herself, and that Ms F would have called the CAS if they needed to be involved because of her own legal obligation.

Ms F first met Ms X in the fall of 2007 when she started working for the Gales. She knew of her previously, as she was in the same College ECE program, but in a different section.

Ms F described Ms X as incredibly confident, something she found admirable as she herself lacked self-confidence at that time. They became friends, and became closer as time went on. She would spend time with the Gales and Ms X shopping, eating, in the garage smoking, and watching TV. Ms F thought that Dr. Gale had occasionally watched TV in the basement with Ms X, possibly three or so times, and she watched programs with Ms X as well. She thought Ms X was being untruthful when she stated that Dr. Gale came to watch TV alone with her on a regular basis.

Regarding marijuana usage, Ms F smoked on one occasion with Ms X, but it made her sick and sleepy.

Ms F confirmed that QRS had said that Ms X hated him. She spoke to Mrs. V about this but not to Ms X as they were not yet close friends. Ms F saw the Barbie doll when Mrs. V showed it to her, after finding it hanging on the bannister. She did not discuss this with Ms X. While she thought it was weird, she was happy to see that Ms X was trying to establish rapport with QRS.

Ms F testified that Ms X on multiple occasions would say in front of the Gales that she had great job security, as she could go after them for sexual harassment and “we” (Ms F and Ms X) “would be rich if we split the proceeds”. Ms X also would brag about a lot of things including that her breasts being better than the other “girls” in the household. These things were done in front of the household, and were thought of as great jokes.

Ms F testified that her trip (with the Gale family and Ms X) was a graduation present. She confirmed that Ms X had trouble with her eye about halfway through. When Ms X had trouble with her eyesight, she stopped participating in childcare.

Ms F confirmed that following the Florida trip, she had a fight with her boyfriend and moved into the Gales house. She testified that she stayed in the Gale household from May 12 through until the end of August 2008. She testified in cross examination that she had been with her boyfriend for a long time and they were trying desperately to work things out. Generally, she

would spend about one night a week with him at his parents' home. She had Ms X's car from when they came back from Florida until mid-July.

On June 2, 2008 the night prior to Ms X's surgery, she was watching the boys and staying in XYZ's room. When confronted that others had said she was not there, she said that "my friend was having surgery and my other friend was performing it." She went on to say that she wanted everyone to get as much sleep as possible. She denied that Mrs. D slept upstairs at any time in XYZ's room. She was very certain that she slept there, and stated she would have been aware if Mrs. V had gone downstairs to wake up anyone. She testified in cross examination that she may have told the College that she couldn't recall many specifics of June 2, 2008. She testified that she remembered some specifics but not everything. She agreed when faced with the notes of her interview with the College that she had stated that she could not recall the details.

Ms F testified that Mrs. V told her that Dr. Gale had pulled the plug on the new house. When Mrs. V left for the Bahamas, she asked her - Ms F - to "take over her life" for a week. Ms F helped pack Mrs. V's suitcase, and Ms H took her to the airport. Ms X was recovering from surgery and Ms F was the children's caretaker. Dr. Gale got a call that Mrs. V wanted Ms X out of the house.

She testified that she did not know at that time why Ms X was fired by Dr. Gale, but was upset by it. There was a lot of discussion. Ms X had called her mother, who was not available for several days to help move her to Town A, and therefore Ms X had to stay put.

Ms F testified that she had not taken the kids on the following day to her parents' farm, but stayed at the Gales, as she was entirely responsible for the household; but she had taken them there the weekend before. She identified the pictures (exhibit 40) as dated 25 May 2008 and that they were marked as taken with her sister's camera, not Ms X's - in contradiction to a memo from Ms X to the College that she had borrowed Ms X's camera to take pictures that weekend, when she was, in reality, at the Gales. She testified that she stayed the entire week and would not have left. In cross examination, she testified that she took the boys to a number of different places including to the park, the water slide at the hotel and to Chucky Cheese and that she would try to get them out every day. She agreed she could not remember exactly what they did in 2008.

At the hotel in Town E for the Gale family reunion, they all stayed together in one room with two double beds, she and XYZ in one, and Dr. Gale and QRS in the other. At one point XYZ, when upset, swung his head back into her nose, and the ensuing nosebleed left blood everywhere. That evening, Saturday, at about 10:30, when the kids were asleep, Dr. Gale checked her nose, and she suggested he go to the casino to relax. He did so. She knew it was still night when he returned, as it was dark. She was awake. QRS had refused during the night to go to the bathroom alone as there were bloodstains from her nosebleed.

She testified that they returned to Town B on Monday, June 30. She was asked if she was part of a plan for Dr. Gale to go visit Ms X and take money from an ATM so that he could say he was at a casino. She said she thought this was pretty sneaky but that it was not her idea. She talked via cell phone that weekend with Ms X who was in Town A at her home.

Ms F did not find out why Ms X had been fired until confronted one day by Mrs. V, who saw messages between her and Ms X on an open Facebook page on her computer. These messages were negative about Mrs. V as she did not think it was fair that Ms X was fired, and Ms F referred to them as “not my shining moment.” Because of this, she felt she almost lost her job as well, had further discussion with Mrs. V, and learned of Ms X’s “bad mouthing” Mrs. V to Ms H.

Ms X joined Ms F at her parents’ farm in Town J for a week in July. Ms F testified that she messaged Dr. Gale that they were going to be in town and asked if he wanted to meet them for coffee. QRS was in hospital, and they went to meet Dr. Gale at Chapters for one hour. She told Dr. Gale in advance that she and Ms X would be there. According to Ms F, Dr. Gale hugged and kissed both of them on the cheek and she never saw him kiss Ms X on the lips. She had suspicions around this time that Ms X had feelings for Dr. Gale but did not know about his feelings for Ms X. She agreed she was in frequent communication with Ms X after she was fired. Despite this contact, Ms F testified that she did not ask Ms X why she had been fired.

She testified that Ms X showed her the book that she had shredded and told her she was sending it to Mrs. V. Ms F told Dr. Gale so that it could be intercepted.

Ms F and Ms X remained close after she was fired. They would often be in touch several times a day. Ms F had been supportive of Ms X, and angry at Mrs. V; she also knew that there was some communication continuing between Ms X and Dr. Gale.

Her last conversation with Ms X was at the end of August, before she left the Gales to begin her course at University L. She had not been speaking very much with Ms X by this time, as it was too difficult while she was still working for the Gales. During this conversation, Ms F described Ms X as being very drunk, having had several bottles of wine, she was crying, angry, and said she was going to take Mrs. V down; she didn't care if Dr. Gale went down with her. Ms X described wrongful dismissal and sexual harassment as her reasons, during a conversation lasting over an hour.

Ms F's reaction to this conversation was to burst into tears; subsequently, she talked with her mother, who told her to 'do what she needed to do' She felt conflicted as she loved them both. She spoke to both Gales and told them what Ms X had said. She blocked her phone and internet so that Ms X could not contact her. Ms X had not mentioned any affair to her during that conversation: Ms F first found out the nature of the allegations when the College called her to arrange a deposition in 2009, the Gales having never mentioned this allegation to her.

There was a Facebook message exchange on August 24 and 25, 2008 between Ms X and Ms F in which Ms X said "I don't know if I should call you or not. I hope you are ok. I love you." Ms F replied "I am not okay right now, but I will be. I don't hate you or anything [Ms X's first name]. You don't have to be scared to call. I still love you." Ms F says this exchange came before the final call.

The College asked her for a statement, and she met with Mr. U, an investigator, and a woman for an hour, and felt extremely intimidated like "I was on trial." She felt that they would not discuss anything that did not corroborate their version of events, and did not allow her any elaboration. She last talked by phone on March 5, 2012, with an investigator and a College lawyer, and once again felt extremely intimidated, very anxious, spun in circles, as if to make her trip over her own words. She was very upset after the call.

The notes from those interviews did not mention that during the discussions at the kitchen table, there was joking talk by Ms X about splitting money from a lawsuit with Ms F, but she was fairly positive that she had mentioned that point.

Ms F was asked to comment on Mrs. D's testimony that on leaving the Gales, Ms F had said that Dr. Gale intended to marry Ms X; she said that she may have said that Dr. Gale "adored" Ms X. Ms F denied that at the Chapters meeting, Ms X told her that Dr. Gale wanted to leave Mrs. V for her.

Ms F acknowledged that in her College interview, she may have said that she did not remember "specific events" about the night before the surgery. It was also pointed out that she was mistaken about a number of dates: she thought they came back from Florida on May 13 and this was not correct; she thought she had taken the children to the farm on June 14 but this was also not correct. She also acknowledged that she did not remember where she was every day in 2008.

She also acknowledged that there was tension between Dr. Gale and Mrs. V in July 2008 but she suggested the tension was due to the cancellation of the house building. She wrote a Facebook message to Ms X on July 22, 2008 that everyone in the Gale household was acting so "sickingly [sic] happy" and that she thought they were all "full of shit". It was put to her that she was acknowledging that the Gales did not have a happy marriage and she responded "no, that everybody in the house was happy. It did not necessary [sic] have anything to do with their marriage, but everyone was acting all happy, and Ms X had been fired, and I wasn't happy."

Ms F was aware that Ms X and Dr. Gale had positive feelings for each other and she suspected that Ms X's were more than were Dr. Gale's. She said knew nothing about any kind of sex between them. During the last phone call Ms F had with Ms X, there were statements by Ms X about harassment, but she did not elaborate and was incoherent and drunk. She thought that she would have been the first to know if they were having sex as Ms X told her everything, and there would have been no reason to specifically protect her from knowing that.

DECISION AND REASONS

Issues

The issues as stated above are as follows.

1. Did Dr. Gale sexually abuse his patient, Ms X? Specifically, did he engage in sexual intercourse and/or oral sex with her while she was his patient?
2. Did Dr. Gale's behaviour and interaction with Ms X, as her physician, constitute conduct or an act or omission relevant to the practice of medicine that was disgraceful, dishonourable or unprofessional? In particular, did the hiring of Ms X as the Gales' nanny and the subsequent interactions between Dr. Gale and Ms X (apart from the sexual relationship) constitute disgraceful, dishonourable or unprofessional conduct?

Legal Framework

Legislation

Subsection 1(3) of the Code defines sexual abuse of a patient by a member as:

- a. sexual intercourse or other forms of sexual relations between the member and the patient,
- b. touching of a sexual nature, of the patient by the member, or
- c. behaviour or remarks of a sexual nature by the member towards the patient.

Paragraph 1(1)33 of Ontario Regulation 856/93 provides that the following is an act of professional misconduct for the purposes of the Code:

“An act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.”

This type of professional misconduct encompasses a wide range of unacceptable behaviour. As the discipline process involves adjudication by a panel that includes members of the profession, expert evidence is not required to establish that the conduct is unprofessional.

Onus of Proof

The College has the onus of proving the allegations against Dr. Gale, and the standard of proof is on a balance of probabilities. The allegations must be proven on evidence that is clear, cogent and convincing: *F. H. v McDougall*, [2008] 3 S.C.R. 41. *Osif v. College of Physicians and Surgeon of Nova Scotia*, [2009] N.S.J. No. 111 (C.A.) has affirmed that the principles set out in *F. H. v. McDougall* apply to disciplinary proceedings involving physicians.

In this regard, the Committee notes and took guidance from the observations of Justice Rothstein of the Supreme Court of Canada in *McDougall* as follows:

(i) at paragraph 40 that, “I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course context is all-important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegation or consequences. However, these considerations do not change the standard of proof.”;

(ii) at paragraph 48 that, “some alleged offences may be highly improbable. Others less so. There can be no rule as to when and to what extent inherent improbability must be taken into account by a trial judge. As Lord Hoffmann observed, at para 15 of *In Re B*: “common sense, not law, require that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities”; and,

(iii) at paragraph 49: “[i]n the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on the balance of probabilities. In all civil cases the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.”

The Law with Respect to Credibility

The Committee took guidance from the case of *Re Pitts and Director of Family Benefits Branch of the Ministry of Community & Social Services* (1985), 51 O.R. (2d) 302. The Court in that case held that in weighing the testimony of witnesses, the test is not the relative number of witnesses, but the relative force of their testimony. One witness' testimony may be preferred over many. The Committee can believe all a witness said, part of it or reject it entirely. Discrepancies in witness testimony, or between his or her testimony and that of others, do not mean necessarily that the witness should be discredited, as some witnesses may fail to recollect, or may hear or see things differently. Innocent errors in recollection are not uncommon.

Further, *Re Pitts and Director of Family Benefits Branch of the Ministry of Community & Social Services* (1985), 51 O.R. (2d) 302 indicates that in assessing a witness' credibility, a trier of fact may consider the following:

1. The extent the witness had the opportunity to observe the matter at hand
2. Did the witness have any interest in the outcome of the litigation?
3. Did the witness exhibit any partisanship, any undue leanings toward the side which called him as a witness? Included here is, was there a blood relationship, association or friendship which would possibly create a bias or prejudice, and affect the value of the testimony?
4. It is always well to bear in mind the probability or improbability of a witness's story, and to weigh it accordingly. This is a sound common sense test. Does the evidence make sense? Is it reasonable? Is it probable? Did the witness show a tendency to exaggerate testimony?
5. Was the testimony of the witness contradicted by the testimony of another witness or witnesses whom we consider more credible?
6. Does the fact that the witness had previously given a statement that is inconsistent with part of the testimony at trial affect the reliability of the evidence?

The Committee also found the case of *R. v. M.G.*, [1994] O.J. No. 2086 (C.A.) to provide useful guidance. It held that when assessing the credibility of a witness, inconsistencies on minor matters or matters of detail between what the witness said at the hearing and what he or she said on other occasions, are normal and to be expected, and don't generally affect the credibility of the witness. Where the inconsistency involves a material matter about which an honest witness is unlikely to be mistaken, the inconsistency can demonstrate carelessness with the truth. The trier of fact must then decide whether it can rely on that witness' testimony. However, even where there is a material inconsistency between what a witness said at the hearing and what she said on an earlier occasion, a trier of fact can still accept the witness' testimony and (even in a criminal context) convict the accused, so long as the inconsistency is properly assessed along with all other relevant factors in deciding whether to accept the witness' testimony.

The Committee is also aware that allegations of sexual abuse do not have to be supported by corroborating evidence.

We were also advised by Independent Legal Counsel at the time of closing argument and in the presence of the parties about the rule in *Browne v. Dunn* (1893), 6 R. 67 (H.L.) that if a party is going to ask the Panel to find that a witness is lying, they should, generally speaking, be cross examined on the point that their evidence is being called into question on and may be directed to the other evidence that has or will be called and upon which the cross-examiner will rely to say at the end of the case that the witness is being untruthful. However, there is no presumption that if a witness is not cross examined that their evidence is necessarily true. In summary, the Committee understands that this "rule" is not truly a rule but is a concept of fairness to the witness and it is not rigid in nature but can be considered when assessing a witness' evidence.

Using the foregoing criteria and the evidence presented, the Committee made its credibility assessment, and determined the weight to be given to the evidence of each witness. The evaluation of credibility of any witness is intertwined with the analysis of the evidence as a whole including the testimony of other witnesses and the exhibits.

Overview

The central contested issue in the case was whether there was a sexual relationship between Ms X and Dr. Gale which included sexual intercourse and/or oral sex. The Committee finds that Dr.

Gale and Ms X did have a sexual relationship that included sexual intercourse and oral sex while she was his patient as alleged and that this constitutes sexual abuse of a patient. What started as a flirtatious and personal relationship evolved into much more, just as Ms X testified it did.

Separate and apart from the allegation of sexual abuse, the Committee also finds that it was inappropriate and unprofessional for Dr. Gale to participate in the hiring of his patient as his family's nanny and to have the inappropriate relationship (apart from sexual intercourse and oral sex) that he had with her.

Issue 1 - Did Dr. Gale engage in sexual intercourse and/or oral sex with Ms X while she was his patient?

As indicated, after careful consideration, the Committee finds on the balance of probabilities based on clear, cogent and convincing evidence that Dr. Gale and Ms X had an intimate sexual relationship which involved oral sex and sexual intercourse. The reasons for this conclusion are set out below.

The Committee's assessment of the credibility of witnesses in this case played an important role. The evidence required careful scrutiny and assessments of credibility were required far beyond the two main witnesses (Dr. Gale and Ms X). The oral evidence, along with supporting documentation, needs to be seen overall, as a complete picture, to explain in a common sense way how events truly unfolded.

The Committee's conclusion in this matter rests on four main points:

- (i) The credibility of the witnesses;
- (ii) The personal relationship between Ms X and Dr. Gale which laid the groundwork for intimacy between them;
- (iii) A detailed assessment of the evidence relating to the sexual allegations; and,
- (iv) A consideration and rejection of the defence theory of the case.

The Committee will examine each one of these points in turn.

(i) The Credibility of the Witnesses

The Committee considered and assessed the credibility of the key witnesses in the context of the evidence as a whole and following the guidance of the case law as set out above. The Committee sets out below a preliminary overview of its credibility assessments. It then turns to a detailed consideration of the allegations in which it amplifies its reasons for the credibility findings.

Mr. B

Although Mr. B did not have direct knowledge as to whether there was a sexual relationship between Dr. Gale and Ms X, the Committee's assessment of his credibility and the evidence that he gave is a useful starting point as he gave clear and cogent evidence, based on his direct observations regarding their relationship.

The Committee considered that Mr. B was the only witness in relation to the household events who had no real personal interest in the outcome. While he had had a close relationship with Ms X, this ended during her last visit to him in [state in the United States] in May 2008, and from that time on, while he still continued to have the occasional communication with her, it was never initiated by him. It is possible that her later informing him that she was having an affair with Dr. Gale during the time they had been together could well colour his description of the events he observed or participated in, or that their prior relationship was such that he might want to assist Ms X by supporting her testimony in this case, but the Committee did not find this to be the case. In fact, he was dispassionate in distancing himself personally from the Gales, as well as Ms X's family. None of the participants appeared to have his favour or approval. He is now engaged to another woman, settled in his job in [state in the United States], and has moved on from the situation that he was involved in when he was in his relationship with Ms X.

In testifying, he was forthright and did not speculate on areas that presented memory difficulty and was open to the possibility that his memory could have been faulty about events that had occurred so many years ago. There were some minor discrepancies between the transcript of his interview with the College investigator and his testimony at the hearing, but none of any significance that would affect either his credibility or his description of the events.

His testimony that there was a flirtatious relationship between Dr. Gale and Ms X was confirmed by other evidence, namely by the “GILF” card which came out mid-hearing and which Dr. Gale and Ms X made together. The Committee preferred his testimony that Dr. Gale referred to Ms X as a NILF to that of Dr. Gale, who testified that he did not believe that he did so. Even Dr. Gale acknowledged that it was possible that he referred to Ms X as a NILF.

Therefore, the Committee accepts, as most probable and accurate, Mr. B’s description of the relationship that Ms X had with Dr. Gale, his recollection of the events that occurred while he was at the home of the Gales, and the subsequent interactions. Where others’ descriptions may vary, the Committee accepts Mr. B’s description of events. The Committee also accepts Mr. B’s testimony that he, Dr. Gale and Ms X all smoked marijuana together on one occasion in the garage of the Gale home when Mr. B visited there in December 2007. The Committee does not accept Dr. Gale’s denial on this point.

We note that although Mr. B testified to the flirtatious nature of the relationship between Ms X and Dr. Gale, he did not witness or provide direct evidence of a sexual relationship between Dr. Gale and Ms X. Ms X did tell him some months later that she had had such a sexual relationship with Dr. Gale, but he had no first-hand knowledge on this issue.

Mr. A

Mr. A’s testimony was short and restricted to whether he found certain email exchanges between Ms X and Dr. Gale when separating out the recycling and their content. He was direct in his testimony in this respect.

The Committee accepts the evidence of Mr. A as credible. The Committee is aware that he is not a disinterested party given his daughter is the complainant. His memory was not precise regarding dates.

The Committee finds that he found printed paper that were emails from Dr. Gale to Ms X, that they spoke to a personal relationship between Dr. Gale and Ms X and referred to Ms X’s “boobs.” The Committee accepts that the emails indicated that Dr Gale missed Ms X. Indeed, his testimony was largely unchallenged by Dr. Gale and Dr. Gale admitted that the emails may have referred to Ms X’s “boobs” but said that that the reference came from Ms X, not him. The

Committee rejects Dr. Gale's testimony on this point and finds that the emails came from Dr. Gale to Ms X as Mr. A said they did. Mr. A's testimony supports other evidence that, at a minimum, Dr. Gale and Ms X had a personal and flirtatious relationship which exceeded the nature of the relationship that Dr. Gale was prepared to acknowledge. Further, Mr. A's evidence regarding the content of the emails also lends some support to Ms X's testimony that a sexual relationship developed between Dr. Gale and Ms X.

Mrs. D

The defence sought to portray Mrs. D as untruthful or immoral by describing Dr. Gale as a sociopath, using unacceptable language, sexualizing a doll and wanting to hurt the Gales. The defence submitted "the apple does not fall far from the tree", the intent being to denigrate Mrs. D and her daughter by association. While Ms X was not the perfect daughter and Mrs. D was out of place at times in the expressions she used, there was nothing in the assessment of the Committee that supported intentional lying or fabrication of any events including Mrs. D's testimony of the events of June 2nd, the Canada Day long weekend or the various conversations she had with Dr. Gale. She did not deny mixed emotions about her daughter's relationship with Dr. Gale. The attempt to portray Mrs. D as an odd person who made sexualized dolls falls flat in light of the GILF card which surfaced mid-hearing and which showed that Dr. Gale participated with Ms X in preparing a doll card that depicted his own erect penis.

Mrs. D was not challenged on much of her testimony. For example, her evidence that Dr. Gale told her just after the June 3 surgery that he loved her daughter was affirmed in cross-examination as being understood to be a non-romantic love but a statement of love nonetheless. She was asked nothing about her evidence that Dr. Gale later told her that he was planning on leaving his wife and that Ms X could be the children's nanny but that they could not be together for one year. Her evidence that he said "you sent me a beautiful girl and I am returning her damaged, I am so sorry" was not questioned. Her evidence that Dr. Gale told her he was talking to a psychiatrist friend, that Mrs. V was threatening him about allegedly fraudulent activities (there was no evidence of any such wrongdoing by Dr. Gale), and that Ms F had told her about the ATM casino alibi idea was not questioned. Even her evidence on the June 2 events was not fully challenged. This is not a criticism of counsel and the Committee has not simply assumed

that unchallenged evidence is necessarily true but the Committee considers it in our overall assessment of Mrs. D's evidence.

It is true that Mrs. D, like any mother, wanted to support her daughter. However, the Committee finds that she was credible in her testimony. This includes her evidence as to the June 2 events and matters related to the Canada Day long weekend. The Committee finds that a consideration of the evidence as a whole did not support any suggestion that she was fabricating a story to support her daughter.

Mr. C

Mr. C's evidence was that the persons working in the PPAS, based on his knowledge of their training and practices, would never advise a physician that it was acceptable to hire a patient as a nanny. The Committee accepts Mr. C's evidence as an accurate representation of how the College responds to inquiries regarding hiring a patient. His evidence made sense, was given in a clear manner and is consistent with College Policy (exhibit 19). Aspects of his evidence were contradicted by the evidence of Mrs. V and this will be discussed further in our reasons, but to be clear, the Committee prefers the evidence of Mr. C over the evidence of Mrs. V on this point.

Mrs. V

The Committee accepts Mrs. V's evidence regarding her illness as it is supported by Ms F and Ms E. The Committee accepts the presence and severity of her illness.

Mrs. V has an obvious interest in the outcome of the hearing and the Committee found her testimony to be argumentative and incredible at times which in the Committee's view lessens generally the weight of her testimony.

The Committee did not believe Mrs. V's testimony regarding her contact with the College as to the appropriateness of hiring Ms X, first as a babysitter and later as a live-in nanny. In this regard, the Committee prefers the evidence of Mr. C regarding the standard response to such an inquiry and finds that Mrs. V either did not receive the advice she testified to, purposefully or mistakenly misapprehended the advice, or possibly never called at all. This detracted significantly from her credibility.

The Committee also believes that Mrs. V's behaviour in suddenly leaving the household and firing Ms X from afar speaks to a greater degree of preceding conflict in the household than she described, and points toward her glossing over some of the realities of the situation. In the end, the Committee gave little weight to her testimony.

The only evidence that Mrs. V gave which had a direct bearing on whether there was a sexual relationship between her husband and Ms X was her evidence that she denied Dr. Gale was in bed with Ms X on the morning of June 3, 2008, the day of Ms X's surgery by Dr. Gale. The Committee, for reasons which will be further set out below, accepts the evidence of Ms X and Mrs. D, and rejects the testimony of Mrs. V and Dr. Gale on this point.

Ms F

The Committee has significant reservations about the evidence given by Ms F. She was quick to speculate or advance positions or arguments that were contrary to the weight of the other evidence in the case. For example, her initial statement to the College was that the TV room downstairs at the Gales was only used for parties. The implication of this statement was not specifically stated but it was apparently meant to imply that Ms X was untruthful in saying that she and Dr. Gale watched TV alone in the basement. When confronted with the evidence of others that the basement was used by Dr. Gale and Ms X to watch TV, she admitted that her statement that it was just used for parties was not accurate. She also tried to undermine Ms X's testimony by saying that if Ms X and Dr. Gale were having sex, she would be the first to know; and, that if Mrs. V had gone downstairs to wake anyone up, she would have been aware of it. These statements to the Committee came across as argument rather than evidence that could be relied on.

Ms F appeared to positively exaggerate in describing Mrs. V as overall a happy person and a helicopter parent, always in and out. This was inconsistent with the stress which she acknowledged in the household and the severe limitations on Mrs. V as a consequence of her illness. She was inconsistent as well in her evidence, acknowledging that she may have said Dr. Gale adored Ms X and then saying that she knew that Ms X had feelings for Dr. Gale but not the reverse.

Her testimony about the night before the surgery and the Canada Day weekend are dealt with in detail below but suffice it to say that the Committee does not accept that she slept at the Gales in XYZ's room the night before the June 3 surgery, nor does the Committee accept her Canada Day weekend evidence in contrast to Ms X's evidence as to what occurred that weekend.

The Committee views as improbable that she did not ask Ms X about the reasons for her firing at the time it happened. Further, the Committee does not find it believable that at the last telephone conversation between Ms X and Ms F in August that the sexual relationship between Dr. Gale and Ms X was not mentioned as testified to by Ms F. The call lasted for over an hour and was followed by steps to sever the relationship Ms F had with Ms X. Ms X's version of this call makes a lot more sense in the context of the evidence as a whole and the Committee prefers it to Ms F's. This is further addressed below.

The Committee viewed Ms F's description of her interaction with the College investigators to be exaggerated when she said she was spun in circles and felt extremely intimidated.

Overall the Committee viewed her evidence as suspect and unreliable.

Ms E

The Committee notes that Ms E responded directly to the questions posed; however, her responses came across as somewhat tailored to attempt to assist the Gales. The Committee notes Ms E's friendship with the Gales and that she continues to work for them from time to time. Ms E was highly critical of Ms X. Her only evidence on the major issue (of whether sex occurred between Dr. Gale and Ms X) relates to the time period of June 9 to 12 when she says she assisted in child care and she said that Dr. Gale was sick in bed "flat on his back" with a migraine and vomiting and that she changed the "vomit bucket". The implication of her evidence was that she was around during this time, Dr. Gale was sick in bed and that Ms E did not observe a sexual relationship between Dr. Gale and Ms X and that therefore it did not happen. The difficulty with this evidence is that while Dr. Gale said he had a migraine at around this time, he said nothing about being sick in bed and vomiting and in fact was not even sure if he was home or at work on the Wednesday (June 11) that week. In addition, Dr. Gale said nothing about Ms E being there on June 9 to 11. In fairness to Ms E, she was not cross examined on her evidence that Dr. Gale was flat on his back sick in bed from June 9 to 12. Having said that, the Committee concludes on

a consideration of all of the evidence that Ms E was mistaken to the extent that her evidence intended to suggest that Dr. Gale was sick in bed the whole time from June 9 to 12 and could not have had sex with Ms X during this time.

Ms X

We have had the benefit of reading the reasons of the Minority of the Committee. The Committee disagrees with the Minority's view that Ms X's testimony came across as rehearsed. The Committee found her evidence to be entirely credible. There is no dispute that Ms X was a sexually active woman in her early twenties. Her language at times with her friend, Ms G, was crass but not surprising for a woman of her age. The defence attempted to suggest that her crassness made her subject to exaggeration and false allegations and that she was really after money for wrongful termination or revenge. The Committee finds that there is no support in the evidence for these suggestions and that they are nothing more than baseless allegations by Dr. Gale. The Committee does not believe Dr. Gale on this point. If, as Dr. Gale suggests, Ms X was somehow testifying to advance her financial interests, then where was the civil suit or a single written demand of any kind to support this theory of events?

As to the suggestion that Ms X was out for revenge and was prepared to lie to get it, the Committee notes that she is a person who has suffered serious health issues throughout her life. Shortly before the hearing, she underwent an organ transplant for example. The hearing in this case did not start for a number of years after the events in question. The Committee does not believe on the evidence before it that four years later Ms X was so consumed by anger or desiring revenge about events that happened years before that she would concoct and follow through with an elaborate series of lies in order to attempt to destroy the career and family life of Dr. Gale. It simply does not fit with the Committee's assessment of the evidence nor does it fit with the Committee's judgment as to the character and motivations of Ms X. The Committee believes that she was motivated by a desire to see justice served.

There was a discrepancy between her evidence and Mrs. D's evidence as to why the emails with Dr. Gale had not been printed. Ms X said that she had printed some of the emails but that she threw them out as she did not have the right size paper. Later, after she had obtained the right paper, the email account had been shut down. Mrs. D said there was a problem with the printer

and that after they got a new printer, the emails had been erased. The Committee does not consider this discrepancy to be significant. It is clear that there were personal emails between Ms X and Dr. Gale. This was confirmed by Mr. A and by Dr. Gale to some extent. Ms X and Mrs. D were consistent in their evidence that the emails had been lost and unsuccessful efforts were made to recover them.

Much was made about Ms X's inaccuracy with times and dates. This occurred throughout her evidence. She testified that in October or November of 2008, approximately five months after the events at issue, she created a calendar from memory which reflected her best recollection of when certain events occurred. It is true that the evidence she gave with respect to some of the dates was inaccurate. When she was challenged with respect to these inconsistencies, she explained that the e-mail dates would be more accurate than her memory. The fact that she was in error with specific dates speaks more to her lack of attention to detail which was not important to her. The developing intimacy between herself and Dr. Gale was what was important, and in this, her evidence never wavered and made sense in the context of the evidence as a whole.

Inaccuracy of times and dates can be important; however, in the circumstances of this case, the Committee finds Ms X's explanations to be reasonable and does not find her credibility to be undermined by errors in the dates.

There was no question that Ms X's memory loss was convenient at times in relation to her evidence regarding the Barbie garden/cemetery, hanging Barbie and shredding of a carb count guide, but this did not undermine her testimony in the Committee's assessment on the central allegation of sexual relations.

If one puts aside the allegations of the sexual relationship that Ms X says developed in May 2008 and following and one looks only at the relationship that Ms X described as existing between herself and Dr. Gale before mid-May 2008 and compares it to the relationship that Dr. Gale described up until that time, it is Ms X's description that rings true. Ms X described a close personal flirtatious relationship where they occasionally smoked marijuana together, watched television together, took hot tubs together and, on one occasion, she flashed her breasts at him. Her evidence in relation to these events is supported by a consideration of the evidence as a

whole including the evidence of Mr. B, the GILF card, and the emails described by Mr. A (which came after May 2008 but nevertheless shone light on the relationship prior to that time).

Dr. Jeffrey Gale

Dr. Gale sought, in the Committee's view, to minimize his relationship with Ms X, denied the smoking of marijuana and made no mention of the breast flashing incident. His description of the relationship up until the return from Florida in May 2008 (and afterwards) was not candid or accurate based on a consideration of the evidence as a whole.

On the minimization of the relationship with Ms X by Dr. Gale, the Committee notes, for example, as follows:

- Dr. Gale took every opportunity to paint Ms X as the aggressor. He testified that Ms X referred to herself as a NILF, which was disputed by the evidence of Mr. B. The GILF card puts the lie to Dr. Gale's evidence - it was he who was prepared to use the GILF term, from which the Committee has concluded earlier that Mr. B must be right in his recollection that Dr. Gale used the NILF term as well with respect to Ms X. Even Dr. Gale agreed in his testimony that it was possible that he may have referred to Ms X that way;
- On watching television with Ms X, he said that he and his wife and Ms X watched television together but then admitted that he "often" watched alone with Ms X but then withdrew the word "often" on the basis that the programs that he and Ms X watched and liked were not on that often;
- In stating that he was to meet Ms F not Ms X for coffee at Chapters in mid- July (this point will be further discussed below);
- Rather than admit that he used the word "boobs" in the email exchange with Ms X, he claimed that the reference to "boobs" in any e-mail exchange with Ms X would have been her doing and not his. This is refuted by the evidence of Ms X's father which was not challenged and which the Committee accepts.

Dr. Gale sought to minimize his role in crossing boundaries (sexualized humour, hot tubbing) with Ms X. He sought to justify his conduct as immature. He first denied to his lawyer that he had made the inappropriate GILF valentine sent to Mrs. D but then subsequently admitted this to be an example of the sexualized humour he used. His mortification at his own behaviour was self-serving and beyond belief. Dr. Gale's cavalier attitude towards boundary issues with a patient is absolutely astounding.

As a consequence, considering all of the above and as further explained below, the Committee places little or no reliability on Dr. Gale's evidence on the major issue to be decided (i.e., whether sexual intercourse and/or oral sex occurred).

(ii) The personal relationship between Ms X and Dr. Gale which laid the groundwork for intimacy between them

Before considering the specific sexual relations allegations relating to events said to have occurred in May and June 2008, it is important to determine what the relationship was between Dr. Gale and Ms X leading up to the point in time when Ms X says a sexual relationship started (in approximately mid-May 2008). Only by first understanding and determining what the relationship was up until mid-May 2008 can the competing versions of events in the mid-May 2008 timeframe, and following, be determined in an appropriate context.

The Committee heard that the nature of the Gale household was unusual in that there were two children who required two nannies and one nanny/babysitter; a wife who was suffering from an illness which kept her indisposed for hours at a time; an atmosphere where there were few boundaries and sexual innuendo was a part of everyday conversation; and, where Dr. Gale had been alone with Ms X on a number of occasions (watching TV or in the hot tub).

The Committee finds that a flirtatious and personal relationship existed between Dr. Gale and Ms X as early as December 2007 and it continued after she was fired. The Committee will review a number of the circumstances. With respect to each circumstance, it is important to understand what Dr. Gale says or doesn't say about the particular alleged circumstance. That evidence included the following:

- Dr. Gale referred to Ms X as a NILF (“nanny I would like to fuck”) as confirmed by the evidence of Mr. B. As explained above in the credibility assessment section of these reasons, the Committee accepts the evidence of Mr. B as entirely credible and in keeping with the evidence as a whole. Dr. Gale’s denial of this allegation was not credible given his admission with respect to the GILF card. Further, as noted elsewhere, his denial wasn’t really much of a denial at all, because even he acknowledged that he might have referred to Ms X as a NILF;
- Dr. Gale smoked marijuana with Ms X on at least one occasion as confirmed by the evidence of Mr. B and Ms X. Dr. Gale’s denial is not believable. Dr. Gale’s evidence was that he might have been present when Mr. B was smoking marijuana with Ms X and that Mr. B may have been “stoned” and therefore been mistaken and thought that Dr. Gale was smoking marijuana too. The Committee rejects Dr. Gale’s testimony on this point as improbable. Mr. B had nothing to gain by saying that Dr. Gale smoked marijuana. It is true he had told the College that both Dr. Gale and Mrs. V smoked marijuana with him and Ms X and at the hearing he said it was himself, Ms X and Dr. Gale, but not Mrs. V. The Committee accepts his evidence at the hearing that he was not sure about Mrs. V being there and the Committee does not consider that this detracts from his evidence that he recalls Dr. Gale being there and smoking marijuana. On the other hand, Dr. Gale minimized his own involvement with Ms X when the evidence did not support the minimization. Further, the casual atmosphere of the home was much more in keeping with Ms X and Mr. B’s version of events on this point than with Dr. Gale’s;
- Dr. Gale watched television alone with Ms X and they also were alone from time to time in the hot tub. Again, Dr. Gale tried to suggest that these events did not happen often but it is clear that they did happen;
- Dr. Gale made the GILF card with Ms X, depicting his own penis, to be sent to Ms X’s mother. Although he initially denied to his own lawyer that he had made the card, he later admitted it. This was after his own lawyer had cross-examined Ms X about a doll that Ms X’s mother made for Dr. Gale with a cloth penis and it was suggested to Ms X that the Gales were “mortified” by the doll. Dr. Gale’s making of the GILF card makes it clear that he was not mortified by the cloth doll and he did not say that he was when it came time for him to testify (by which time the “GILF” card had surfaced at the hearing);

- Dr. Gale encouraged Ms X to flash her breasts at him in the Wal-Mart store in Florida in early May 2008. Ms X was not cross examined on this point and Dr. Gale said nothing about it in his evidence. The Committee accepts that this happened as Ms X said it did;
- Ms X testified that when she was ill in Florida in early May 2008, Dr. Gale lay down on the bed beside her and said “you know I love you, right?” Ms X took it at the time as a sign of friendship. Ms X was asked nothing about this in cross examination and Dr. Gale said nothing about it in his evidence. The Committee accepts that it happened as Ms X said it did; and
- Ms X’s “boobs” were referred to in emails between Dr. Gale and Ms X after her termination and that Dr. Gale wanted to see Ms X again.

The foregoing events, except the latter emails, occurred before Ms X said that Dr. Gale first came to her bed in mid-May 2008 after they returned from Florida and only days after he said to her “you know I love you, right?” The foregoing does not prove that sexual intercourse occurred between them but it is in this context that the Committee must consider the evidence bearing on the issue of whether it is more likely than not that sexual relations occurred beginning shortly thereafter, as Ms X said they did.

(iii) A Detailed Assessment of the Evidence relating to the Sexual Allegations

The Committee finds that the evidence taken as a whole establishes on the balance of probabilities that a sexual relationship involving sexual intercourse and oral sex occurred between Dr. Gale and Ms X in May 2008 and the first half of June 2008 while she was his patient, (and on the Canada day long weekend when she was no longer his patient). In addition to considering the evidence as a whole, the Committee considers it useful to break down a consideration of the sexual allegations into the following categories: the events of May 2008; the events of June 2 and 3, 2008; the events of June 6 to 12, 2008; the Canada Day weekend; and the Chapters meeting and other post firing events. Different witnesses were involved with the different categories of events.

Events of May 2008

The Committee heard from Ms X that actual sexual advances began in Florida with the attempted removal by Dr. Gale of her bikini top in the swimming pool on the night before they were to leave to return home. Dr. Gale denied this allegation on the basis that they were too busy packing the night before and that Ms X was not well enough to be out in the pool. The Committee accepts Ms X's version of events as much more in keeping with the relationship that was developing with Dr. Gale at that time. It was only shortly before this time that she flashed him her breasts, which Dr. Gale did not address in his testimony. Ms X was clearly well enough in this timeframe to go to Wal-Mart with Dr. Gale and Ms F, so evidence as to a late night swim is quite believable and the Committee accepts it as probable. The attempt to remove her bikini top was in keeping with Dr. Gale's sense of humour and the relationship that was unfolding. The fact that Ms X did not mention this event in her initial College interview is of no consequence. Her explanation was that she did not mention every single detail and the Committee accepts that in the grand scheme of things, the bikini top incident was minor compared to the sexual events that followed.

Following their return home in May 2008, it is alleged that Dr. Gale came to Ms X's bed in the middle of the night, he shared his problems with her and she performed oral sex on him. It is alleged that he returned to her bed frequently on other nights and that they progressed to having sexual intercourse before she left in late May for [state where Mr. B lived].

Ms X's testimony that she broke up with her boyfriend, Mr. B, after sexual relations between her and Dr. Gale had started, is consistent with her narrative of the events. The Committee does not place significant weight on this fact. The Committee simply observes that it is an event that makes sense in the overall scheme of things.

Ms X testified before the Committee that Dr. Gale came to her room on the night of May 13th. In cross examination, she was taken to an e-mail sent to her friend Ms G on May 14th in the evening (9:39 p.m. Ontario time) in which she describes oral sex in Dr. Gale's office after her appointment that day. The e-mail includes a statement that "nothing happened last night". When challenged about the inconsistency of her evidence that sex had occurred on May 13 (contrary to the email of May 14 which said that nothing happened "last night"), she went on to explain that

after Dr. Gale had come to her bed, she spoke to Ms G the next morning saying that they needed to communicate by MSN (because of the private nature of what was to be discussed). After reading the e-mail of May 14th, she agreed that she may have been wrong in saying that Dr. Gale came down on May 13th and that it could have been earlier (the 11th or the 12th of May). She went on to say that what she was certain of was that this occurred within several days of their return from Florida. The Committee finds this to be an example of faulty memory for dates which were on the calendar that she created from memory and which she thought were accurate to the best of her recollection. The Committee does not accept that this undermines her credibility in respect of how the intimate relationship with Dr. Gale began.

Ms X testified that she and Dr. Gale had oral sex in the office at around 6:00 p.m. on May 14, 2008 (because this was enough time for her to have her eyes dilated and the an injection performed). Her estimate of the time of the oral sex was based on an extrapolation from the time of dilation in the medical record. Her medical record establishes that an injection was performed at 7:30 p.m. Her testimony was clear in terms of the sequence of events, that after the injection they went down to his office, performed oral sex on each other, and then returned home for dinner. She then communicated with Ms G about the events which occurred. The Committee does not find her evidence with respect to the timing of events troubling; rather, her best recollection of the exact timing of when oral sex occurred is off by one or two hours and this is not a significant discrepancy.

The fact that there were three or four adults in the household from time to time did not detract from the opportunity for Dr. Gale to spend an hour or so in Ms X's bed on one or more nights.

Ms X's e-mail to Ms G of May 14, 2008 mentioned above stated as follows:

"well, nothing happened last night, but we went down on each other in his office after he stuck a needle in my eye tonight. fuck, fuck, fuck... it was hot though"

This e-mail did not become evidence for the purpose of proving the truth of the contents of the e-mail. Rather, this e-mail was tendered as a prior consistent statement to rebut the allegation of "recent fabrication" raised by Dr. Gale to the effect that after her firing (and subsequent breakdown in the relationship) Ms X had fabricated the allegations of sexual relations.

The Committee was directed to the decision of the Supreme Court of Canada in *R. v. Stirling* [2008] 1 S.C.R. 272 where the Court stated as follows:

"What is clear from all of these sources is that credibility is necessarily impacted-in a positive way-where admission of prior consistent statements removes a motive for fabrication. Although it would clearly be flawed reasoning to conclude that removal of this motive leads to a conclusion that the witness is telling the truth, it is permissible for this factor to be taken into account as part of the larger assessment of credibility.... While it would clearly be an error to conclude that because someone has been saying the same thing repeatedly their evidence is more likely to be correct, there is no error in finding that because there is no evidence that an individual had a motive to lie, their evidence is more likely to be honest." (emphasis added)

Accordingly, while the Committee did not consider the May 14 e-mail as proof that sexual relations occurred, the Committee does find that it seriously undermines Dr. Gale's argument that Ms X was making up the allegations because of the firing and the later breakdown in the relationship. The May 14 e-mail enhances the credibility of Ms X.

What is Dr. Gale's answer to the allegation that sexual relations occurred in May 2008? It is the same answer he gives generally with respect to all of the sexual allegations, namely that it did not happen. This denial both specifically related to the May 2008 allegations and generally is not believable to the Committee on a consideration of the evidence as a whole. The evidence as a whole supports the finding of a sexual relationship which included sexual intercourse. The flirtatious relationship as found by the Committee up until May 2008 can hardly be disputed and as previously stated, it is in this context that the sexual allegations must be considered. The NILF reference, the GILF card, the breast flashing, the "you know I love you" statement, the "boobs" email references, the evidence of "turmoil" and "tension" in the household in June and July 2008, to name only a few examples, strongly support Ms X's version of events that sex occurred as she said it did.

Events of June 2 to 3, 2008

Ms X had been away in [state where Mr. B lived]. Her mother picked her up at the airport and they returned to Town B on either June 1 or June 2. Ms X and Mrs. D testified that Dr. Gale

came down in the night (June 2/3) and asked for help with the baby. The result, they said, was that Mrs. D went to help with the baby and slept in XYZ's bedroom and Dr. Gale slept with Ms X in her bed. Both Ms X and Mrs. D testified that Mrs. V went downstairs the next morning to wake up Dr. Gale and Ms X. Dr. Gale denied all of this as did Mrs. V. In addition, Dr. Gale called the evidence of Ms F which was to the effect that she had slept in XYZ's room on the night of June 2 and that Mrs. D was not in XYZ's room.

It is necessary to consider the evidence of Ms X, Mrs. D, Dr. Gale, Mrs. V and Ms F on the issue of the June 2 and 3 events in the context of the evidence as a whole including the facts just noted in the above section concerning the flirtatious and personal relationship between Dr. Gale and Ms X.

If Dr. Gale spent the night in Ms X's bed as she and her mother attest, the Committee considers that there is no doubt that intimate sexual relations occurred as Ms X said they did.

The Committee finds that the events of the night of June 2nd and 3rd occurred as Ms X and Mrs. D said they did and its reasons for this conclusion involve an assessment of all of the evidence of the witnesses who gave evidence on this issue and are set out below.

The evidence of Ms X and Mrs. D as to what occurred on June 2nd and 3rd is supported by Mrs. D's testimony that she helped with caring for XYZ the morning of June 3rd. Had Ms F been there, as she testified she was, there would have been no need for Mrs. D to look after XYZ and she could have gone to the hospital with her daughter. On the other hand, if Ms F was in the home that night as she testified, sleeping in XYZ's bed, clearly Mrs. D would have been wrong when she testified that is where she slept alone.

The Committee heard evidence from Ms X in direct and cross examination that her mother had driven Ms X to Town B after she returned from her trip to [state where Mr. B lived] and was there to help out and look after Ms X. Further, Ms X testified in cross examination that Ms F was not around on the day she had surgery, and that was why XYZ had to go to daycare at Ms H's. Ms F had an obligation elsewhere and was not able to be there so it was necessary for Mrs. D to stay and help with XYZ.

Mrs. V was not questioned on the point of who was to take care of XYZ on June 3. Mrs. D was questioned and her recall of caring for XYZ in the morning of June 3 was consistent and detailed. She testified that Ms F had been at the Gale home when she and Ms X arrived the day before (June 2), but that Ms F had left taking Ms X's car. Dr. Gale testified that he had no specific memory of Ms F being there. Dr. Gale drove Ms X to the hospital on June 3.

Ms X's testimony was consistent and unequivocal, as was her mother's; Ms F was not there the night of June 2nd or the morning of June 3rd. Mrs. D helped look after XYZ in the morning and he went to Ms H's daycare. Dr. Gale testified that Ms X's mother on occasion would come to help Ms X watch the children when they were away, so this was not unusual. Ms F arrived back at the Gale residence sometime later on June 3rd and assisted in the search for the missing Percocet.

The defence takes the position that Ms F's evidence that she slept in XYZ's room on the night of June 2 was sound, and that her character was not impugned. The Committee disagrees. Ms F was clearly close to Mrs. V. She had benefitted over many years from the generosity of the Gales. She said she was not aware of her friend's (Ms X's) sexual relationship with Dr. Gale. She agreed that she could have said that "Jeff adored [Ms X's first name]" as Mrs. D testified.

Whether due to faulty memory, misguided loyalty or profound gratitude to the Gales, the Committee does not accept Ms F's evidence that she spent the night of June 2, 2008 at the Gale residence for the reasons mentioned above and for the following reasons:

- It was planned that Ms X and her mother would be at the Gales (before the surgery). Mrs. D was another pair of hands to help with XYZ the morning of June 3rd, which she testified she did. There was no need for Ms F to be present in the morning and no evidence that she was, aside from her own recollection;
- If she had been present, there would have been no reason for Mrs. D to help out and she could have driven or accompanied her daughter to the hospital. It is more likely in the Committee's opinion that Ms F used that time to stay elsewhere as was her testimony that she did from time to time;

- We find Ms F's evidence gratuitous, especially her comment in referring to the night of June 2nd when she stated "I wanted to make sure that everyone got as much sleep as possible";
- Ms F admitted in cross examination that she could not recall many of the specifics of that night and she agreed that she may have told the College investigator the she could not recall specific events about that night;
- She testified in cross that she would spend one day a week at her boyfriend's parents' home. Having looked after the children while Ms X was away in [state where Mr. B lived] the previous week, the Committee believes that she was not present in the Gale home overnight on June 2;
- She had no recollection of Ms X needing to go back to the hospital in the afternoon of June 3rd. Had she been in the home, she should have been aware of this problem as Ms X was upset, in pain and in distress;
- Ms F demonstrated in her evidence that she was no different than Ms X when it came to dates in that she had previously made errors as to dating certain events and understandably did not have a perfect memory as to where she was every day in 2008; and
- Ms E told the College that she did not remember Ms F moving into the Gale house but testified at the hearing that "Oh, maybe. She broke up with her boyfriend. Yes, there might have been a duration of time that she was there."

In summary, the Committee does not accept the evidence of Ms F that she was there the night of June 2nd; rather, the Committee believes that her memory is faulty in this regard and her evidence is not reliable. Her lack of credibility on this point is in the Committee's view clear. Had Ms F been at the house, she would have cared for XYZ and there would have been no need for Mrs. D to stay and look after XYZ in the morning or for him to go to Ms H's daycare, as both Ms X and her mother testified. Their evidence on this point was unchallenged.

The defence also places weight on the testimony of Mrs. V on the June 2/3 events and otherwise. The Committee does not find Mrs. V's evidence credible on this point and on other points which bear on her credibility generally.

Mrs. V's testimony in respect of the alleged communication with the College at the time of Ms X's hiring was not accepted. Regardless of whether there was a misunderstanding or not, it would have been clear to Mrs. V as well as Dr. Gale that a live-in nanny who was dependent upon him for her eyesight (medical treatment and required drugs), employment, living arrangements and was treated as family, constituted a problem. This is exactly the kind of close personal and emotional relationship with a patient with which the College has concerns. As Mr. C clearly stated in his evidence, it is highly unlikely that the College would have approved the hiring as Mrs. V testified.

The defence seeks to portray Mrs. V as kind, generous and supportive of Ms X. It is true that at certain times when Ms X was working as their nanny, Mrs. V was kind to her. However, this does not speak to the truthfulness of her testimony. The Committee notes that in her statements to the College, Mrs. V was intent on seeking to portray Ms X as being of unsavoury character. In particular, she wanted to tell the College that Ms X was a person who smoked marijuana perhaps not realizing that her own husband had smoked marijuana with Ms X.

Mrs. V testified that she had misgivings as to Ms X's performance of her duties, behaviour, and some specific actions involving the children. If this concern was substantial and if she really thought Ms X was of unsavoury character, surely, in the interests of her children, she would have fired her early on.

Mrs. V's version of the night of June 2nd (Mrs. V testified Dr. Gale slept with her) and the morning of June 3rd (Mrs. V testified that waking Dr. Gale and Ms X in the morning did not happen) are irreconcilable with the evidence given by Ms X and Mrs. D. The Committee does not believe Mrs. V on this point. The evidence of Ms X and Mrs. D concerning what happened on the night of June 2 made more sense in considering all of the circumstances and was accepted by the Committee.

It was the evidence of Mrs. D that she was undisturbed by the thought of Dr. Gale sleeping that night with Ms X. She believed their relationship was more like brother and sister and did not

even consider the issue of sex. She told Mrs. V in the morning to go down and get them out of bed and she said they joked about it. She held Dr. Gale in such regard that she did not question the appropriateness of the situation. It appeared that she realized in her testimony before the Committee how absurd these events sounded.

Mrs. D frankly discussed her mixed emotions and made no attempt to disguise her dislike of Mrs. V or her disappointment that the relationship between Dr. Gale and her daughter was not going to happen. She had nothing to gain personally from confabulating or contriving with Ms X to lie to the Committee.

Dr. Gale's evidence was, as previously stated, to deny that sexual relations occurred. Further, his evidence was that he could sleep through anything and so there would be no reason for him to go downstairs to sleep because the baby was sick. The Committee does not accept his evidence on this point. The Committee accepts the evidence of Ms X and Mrs. D that Dr. Gale came downstairs and told them that he could not sleep because the baby was sick, although in light of all of the evidence, the Committee believes it was not the real reason for his coming to Ms X's bedroom that night.

In conclusion on this point, the Committee accepts that the weight of the evidence both generally as to the relationship between Dr. Gale and Ms X and specifically with respect to June 2nd and 3rd supports that the circumstances unfolded as Ms X and Mrs. D testified they did and that Dr. Gale slept with Ms X in her bed the night of June 2nd, they engaged in intimate sexual relations, and Mrs. D spent the balance of the night upstairs in XYZ's bedroom.

The Events of June 6 to 12, 2008

Ms X testified that a day or two after her surgery, Dr. Gale came back to her bed in the middle of the night and they had sexual relations again.

Mrs. V testified that she abruptly left the household on June 5 and went to the Bahamas and that the reason for this was that she was upset with her husband about his decision not to proceed with the construction of a new home. Dr. Gale said the same thing. She telephoned Dr. Gale the next day and ordered him to fire Ms X which he did. It is also common ground between the

parties that Ms X stayed in the home until June 12 when Mrs. V was about to return. Ms X said that the sexual relationship continued in the June 6 to 12 time period, while Dr. Gale denied it.

Mrs. V indicated that the reason for firing Ms X was that she had bad mouthed her to her friend Ms H; yet, when Ms F was found to say unflattering things on her computer, she was not fired. This family was highly dependent on their nannies. The Committee does not believe that Mrs. V fired Ms X for this reason alone. In addition, the Committee does not find the explanation that Mrs. V's departure was based only on an abrupt change in plans about house construction to be believable. Mrs. V did not strike the Committee as the kind of person who would impulsively leave her husband and young children with no notice and go to the Bahamas because of a delayed house construction.

Mrs. V's unplanned and abrupt departure the next day to the Bahamas, and the subsequent morning call demanding that Ms X be fired, were a logical reaction to the situation that was unfolding before her. The Committee finds incredulous the explanation that Mrs. V's departure was based only on an abrupt change in plans about a house construction. The Committee finds that she knew or suspected that Dr. Gale and Ms X were in a relationship and that that played a role in her departure from the home and insistence that Ms X be fired.

Dr. Gale fired Ms X but then allowed Ms X to stay in the home instead of arranging for her to leave. Indeed, he stayed home with her during the next week. Dr. Gale gave conflicting evidence about time spent alone with Ms X during this time. He did not arrange for her to leave the house as he could have.

Ms X's departure from the household on June 12 was precipitated by Mrs. V's return and did not suggest that this was the end of the relationship between Ms X and Dr. Gale. Indeed, it was not.

During this time period (June 6 to 12), Ms X testified that she and Dr. Gale had sexual relations. Mrs. V was away and Ms F and Ms E were responsible for the children. In testifying that they had the house to themselves, the Committee believes that Ms X was referring to the absence of Mrs. V.

Ms F and Ms E testified that they were in the home when Ms X and Dr. Gale were there during this time period. Ms F was charged with minding the children. She was not a chaperone for Dr.

Gale and Ms X and cannot account for behaviour she did not actually witness. The same is true of Ms E. The Committee has addressed Ms E's evidence to the effect that she remembered tending to Dr. Gale while he was sick in bed "flat on his back" and noted that this evidence was not supported by that of Dr. Gale who said nothing about being sick in bed or Ms E even being present at the home in this time period until June 12. The evidence of Ms E and Ms F does not undermine the Committee's assessment on the evidence that sexual relations occurred during this time.

Ms X's testimony that she believed that Ms F took the children to the farm, and when, may have been inaccurate as her other dates have been. It is, however, of no consequence. The same is true of the photographs showing the children at the farm on May 25. The more important point is that Dr. Gale remained at home with Ms X who was now hired as a nanny, all while Dr. Gale's wife was away.

In all of these circumstances, it is logical to conclude that there was a continuation of the sexual relationship between Dr. Gale and Ms X during this time as Ms X testified and the Committee so finds.

Canada Day Long Weekend

Ms X testified that Dr. Gale came to visit her over the Canada Day long weekend at her parents' home in Town A. Dr. Gale was nearby at a family reunion in Town E. It is alleged that this occurred while Mrs. V was vacationing in Vegas over the July 1, 2008 weekend. It is alleged that there was a planned tryst with Ms X and that he spent the night of June 30, 2008 with her in Town A. Ms X was no longer Dr. Gale's patient at this time.

Ms X was aware of Dr. Gale's plans to go to Town E as she frequently spoke with Ms F. Ms X's evidence that she and Dr. Gale planned to meet is supported by her parents' absence from the home at her request. Ms X's description makes sense. The fact that Mrs. V was away in Las Vegas was confirmed by a number of witnesses.

Ms X demonstrated problems in dates and timing in her evidence regarding what happened when over this weekend. In her evidence in chief, she simply said that Dr. Gale came over one night on the Canada Day long weekend (and that sexual relations occurred) but did not specifically say

which day it was. In cross-examination, her calendar was put to her, which showed that she thought he had come on Saturday, June 28. Later, in re-examination, when she was directed to her e-mail to Ms G of July 1 and a phone record showing a phone call to Ms F on the morning of July 1 at 8:21 a.m., she indicated that her calendar must be in error and that Dr. Gale must have come on the Monday night, June 30.

The imprecision in her dating of matters was typical in her evidence throughout. It does not, however, undermine her credibility. She based her evidence on the calendar that she had made from memory much later, and it was clearly wrong as she admitted. Again, she agreed that the dates on the e-mails and the phone records would be more accurate.

Ms F again features in the cast of characters this weekend but it is clear that she cannot speak for all of Dr. Gale's time. It is reasonable to assume that if Dr. Gale wanted to see Ms X this weekend, he could have easily done so. Ms X's evidence that she discussed the Town E weekend with Ms F is supported by their frequent telephone communication. Ms F attempted to corroborate Dr. Gale's denial that he had gone to Ms X's parents' home by testifying to the effect that on Saturday, June 28, one of the children had awoken in the night and banged Ms F's nose and there was blood everywhere in the hotel room and Dr. Gale was present. She also testified that they returned to Town B on the Monday.

The Committee finds Ms F's purported alibi for Dr. Gale to be extremely weak. Oddly, Ms F was not asked the simple question by either counsel as to whether she knew if Dr. Gale had left Town E that weekend to visit Ms X. She did not testify that Dr. Gale did not leave Town E to visit Ms X. Ms X testified that Ms F had suggested that Dr. Gale use an ATM machine in the casino to verify his whereabouts and create some form of alibi if asked by his wife as to his whereabouts. When asked about this, Ms F simply said "It's pretty sneaky. It sounds like a pretty good idea, but it wasn't mine." Her adoption of the proposal as a "pretty good idea" which "wasn't mine" was not much of a denial in the Committee's view.

On the other hand, far from being undermined by the documentary record, the Committee considers that Ms X's evidence is supported by it. There is a phone record of a call to Ms F's cell phone at 8:21 a.m. on July 1. This is consistent with Ms X's evidence that Dr. Gale requested that

she call Ms F and explain that Dr. Gale had stayed over because he had had too much to drink the night before and was on his way back that morning to Town E.

The Committee, considering all of the evidence, rejects the evidence of Ms F and Dr. Gale that they returned to Town B on the Monday.

Ms X's evidence is also supported by her parents whom she asked to leave the home so that she and Dr. Gale could have private time. This request was confirmed by Mrs. D and Mr. A. Mr. A thought it had happened over the Labour Day long weekend. His confusion in this regard was perfectly understandable given the passage of time.

There is also the issue of the e-mail to Ms G at 7:51 a.m. on July 1 explaining that "Jeff just left" and referring to the fact that sexual relations had occurred between Ms X and Dr. Gale. Once again, this e-mail was not admitted for its truth and the Committee has not interpreted it in that way. Rather, it was admitted to rebut the allegation of recent fabrication, the email having arisen after the firing but prior to the complete breakdown in the relationship. This prior consistent statement can properly be used to strengthen the credibility of Ms X and the Committee views it as doing precisely that because the email was sent prior to the break down in the relationship. The fact that she would send the e-mail to Ms G prior to making the call to Ms F is of no importance as far as the Committee is concerned.

Dr. Gale's evidence on the question of the Canada Day long weekend was quite simple. He confirmed that he was in Town E with Ms F and his children but not his wife. He denied going to see Ms X that weekend. He said he returned to Town B on the Monday (June 30).

Dr. Gale's denial is not believed by the Committee. The fact that there was an ongoing relationship with Ms X even after she was terminated was not denied. There were e-mails between them now apparently lost in which he referred to Ms X's breasts and to Dr. Gale wanting to see her. Dr. Gale sent her flowers and a card when Ms X was unwell in June. Dr. Gale also arranged to meet her at the Chapters bookstore in Town B as is further discussed below. The context and the evidence as a whole supports Ms X's version of events and not Dr. Gale's.

Although not applicable to the finding of sexual abuse given that the doctor-patient relationship had ended, the evidence of Ms X and a consideration of the evidence as a whole lead the Committee to find that sexual relations occurred on the Canada Day long weekend.

Chapter's Meeting and Other Events Post Firing

The meeting of Ms X, Ms F and Dr. Gale at the Chapter's bookstore in Town B in mid-July is not contested. The Committee does not accept Dr. Gale's version that he did not know Ms X would be there. In fact, Ms F testified that Dr. Gale knew that both she and Ms X would be meeting him at the bookstore. Dr. Gale's suggestion that he did not know Ms X would be there is telling and another example of him seeking to minimize the relationship with Ms X. There would be no reason for coffee outside the home to be arranged between Dr. Gale and Ms F alone. The suggestion was made by Dr. Gale that they were meeting because it was Ms F's birthday. According to Ms F, her testimony was that she was then essentially living at the Gale home. In these circumstances, private coffee meetings to celebrate Ms F's birthday would be entirely unnecessary. The Committee believes that Dr. Gale knew full well that Ms X would be there and that that was one of the reasons for the meeting, namely to see Ms X again.

The evidence that the relationship persisted would have been assisted by missing e-mails and support from phone records, nonetheless, Mrs. D testified that Dr. Gale called Ms X on many occasions. This was not challenged in cross-examination. Mr. A's testimony on the emails that he saw also supports the ongoing very personal relationship between Dr. Gale and Ms X.

The Committee considers that Dr. Gale's evidence to the effect that Ms X asked him for \$50,000 when she met with him on July 14 was not believed by the Committee. Ms X denied this. The Committee was aware of evidence from Ms F that she said that long before the break down in the relationships, Ms X had jokingly said they could sue the Gales for sexual harassment and split the proceeds. Ms X denied that this was said and then said she did not remember it. There was no credible evidence to suggest that Ms X wanted money and the Committee rejects this evidence from Dr. Gale as not being worthy of belief.

Had Dr. Gale no intention of continuing the relationship with Ms X after he fired her:

- there is no reason why he would not have severed the relationship out of respect for his wife and arranged for her return to Town A;
- there is no reason why he would meet with Ms X and Ms F at Chapters; and
- there would be no reason to see Ms X in his office the next day (July 14th).

Lastly, Ms X's distress in mid-August when she says the affair ended is supported by her mother, and, to a degree, by Ms F. This is not unexpected with the termination of an affair. She was understandably upset.

As to the conversation between Ms X and Ms F in August after the affair had ended, the Committee prefers Ms X's version of events to Ms F's. Ms X says that she disclosed the affair to Ms F at that time. There is no dispute between them that Ms X was upset during this call. Ms F says that there was no disclosure of a sexual relationship with Dr. Gale and that Ms X was talking about going after Mrs. V for wrongful dismissal and a sexual harassment claim and "taking [Mrs. V] down". Ms F's version of events makes little sense; there was no evidence of a wrongful dismissal suit at any time and a sexual harassment claim against Mrs. V makes no sense. The Committee believes that the affair was disclosed to Ms F at that time and that she was upset about not knowing about it earlier. This led to a breakdown in her relationship with Ms X. She decided that she had to choose sides, and she chose the Gales.

It is also worth mentioning the missing e-mails. As previously indicated, it is common ground that there were e-mails between Ms X and Dr. Gale after she was fired. Ms X testified that her email account was shut down and her e-mails lost. This was corroborated by her e-mail to the email company (exhibit #8) indicating her password was "hacked" and seeking assistance in retrieving e-mail. Further, Mr. B testified that she requested assistance from him in order to recover her emails. It was also supported by the testimony from her and her mother that they had retained a lawyer to attempt to retrieve the e-mails but were unsuccessful. This testimony was not challenged in cross-examination. Further, Mr. A supported the existence of the personal e-mails from Dr. Gale that made reference to Ms X's breasts and he was not challenged in cross-examination on this point. Mrs. D also indicated that she had seen personal e-mails between Ms

X and Dr. Gale and she was not challenged on the point. Finally, even Dr. Gale acknowledged that there were emails between them and that one of them may have referred to Ms X's "boobs".

Dr. Gale testified that all of his e-mails were "automatically deleted after six months" or manually deleted. He testified that he made no effort to retrieve them. The Committee finds his evidence on this point to be quite incredible. If it were true that Ms X had sought a \$50,000 payment from Dr. Gale in mid July 2008, one would've thought that a man of Dr. Gale's intelligence and experience would have made a special point of preserving these e-mails rather than deleting them or permitting them to be deleted "automatically". In addition, he knew by no later than late 2008/early 2009, and very likely much earlier, that Ms X was making allegations of sexual abuse against him. In this regard, Ms X complained to the College in November 2008 and counsel for Dr. Gale responded in late January 2009. Given his testimony that there was nothing "sexual" in the e-mails, again, one would've thought that he would have preserved the e-mails so as to exonerate himself. The Committee infers that he did not preserve the e-mails because he knew that they would implicate him in the sexual abuse allegations rather than exonerate him. However, the Committee notes that this inference regarding Dr. Gale's failure to preserve his e-mails is entirely unnecessary to the overall conclusion the Committee has reached on the evidence taken as a whole, without relying on that inference, that sexual intercourse and oral sex occurred between Dr. Gale and Ms X when she was his patient.

(iv) The Consideration and Rejection of the Defence Theory of the Case

The defence has no onus of proof. Dr. Gale had to prove nothing. Even if Dr. Gale is incredible on some points, it does not mean that the case is made out against him. At all times, the College bears the onus of proof.

It was open to Dr. Gale to make whatever arguments he considered appropriate and it is for the Committee to consider the validity of those arguments recognizing that the rejection of them does not lead to a finding against Dr. Gale because it is the evidence as a whole which must be considered.

In this case, the theory of the defence was that Ms X was fabricating the entire story apparently motivated by money and/or anger towards Mrs. V and Dr. Gale because of her firing and the termination of the relationship between the Gale family and Ms X. It was further theorized that

Ms X's mother, Mrs. D, joined her in a conspiracy to lie about the events of the night of June 2 in particular. The defence sought to portray Mrs. D in cross-examination as a purveyor of bad taste and sexualized humour who wanted to see her daughter in a relationship with Dr. Gale.

The Committee has dealt elsewhere with the suggestion that Ms X was after money. The Committee has rejected the suggestion that Ms X ever sought money from Dr. or Mrs. V.

The Committee also disagrees with the defence theory that Ms X was motivated by revenge to lie. It is true that Ms X was upset at her firing and at the later breakdown in the relationship between her and Dr. Gale. Ms X did not deny that she was upset and she stated openly to the Committee that she had bad mouthed Mrs. V, giving good reason for her firing. If she had believed she was unjustifiably fired, other paths were open to her.

There is nothing in the period of time following her firing and when the affair is alleged to have ended in mid-August which suggested Ms X was considering planning to accuse Dr. Gale of anything, including sexual abuse. In fact, quite the opposite; it is common ground that he acted on her behalf medically, sent her a card when she was ill, they corresponded by email, he met her in Chapters and in his office and they phoned frequently.

The defence sought to argue that because Ms X failed to testify as to Dr. Gale's so called "third nipple" and a scar in near his groin area, she must be fabricating the sexual affair. The Committee saw pictures of these physical attributes and found them to be insignificant and insufficient to be noted. This argument is without any merit.

In summary, the Committee is aware that Dr. Gale bears no onus or burden of proof but the Committee has taken the time to review the various defence theories so as to be complete in its consideration of Dr. Gale's case.

Conclusion Issue 1

The evidence, in the Committee's opinion, supports on a balance of probabilities that an intimate sexual relationship (sexual intercourse and oral sex) existed between Ms X and Dr. Gale while she was his patient.

An allegation of sexual relations between a doctor and a patient is a serious allegation in the professional discipline context. Where the allegations are denied, it is a challenge for the Committee to determine whether the allegations have been proven on the balance of probabilities. In this case, the Committee finds that the sexual affair occurred is clear when one examines the evidence as a whole and in context. The unfolding of events on the evidence is highly persuasive. It is obvious that the personal relationship which started with watching television and hot tubbing together, sexual innuendo including the NILF comment and the GILF card and then breast flashing, did not stop there. The Committee accepts Ms X's version of events as reasonable, logical and detailed and as supported by the testimony and a consideration of all of the evidence. Dr. Gale, on the other hand, was not open or forthcoming and was untruthful in giving testimony before the Committee. For the reasons given, Ms F's evidence is unreliable in respect of the events of June 2/3, 2008 and the Canada Day long weekend. For the reasons given, the evidence of Mrs. V and Ms E also does not alter the Committee's conclusion.

A number of details were not pursued and left hanging (how Ms X knew about the one year rule before a doctor could have a sexual relationship with a former patient, whether the Gales' family doctor visited the home and discussed Mrs. V's admission to a health centre, Ms H's role, and hotel details of the Town E visit). The absence of details as to these points was not material to the Committee's decision.

The Committee understands that the onus is on the College to prove that the events happened on the balance of probabilities as Ms X said they did and it is not for Dr. Gale to prove his innocence. The Committee is satisfied that the College has made its case on the basis of clear, cogent and convincing evidence. The Committee does not believe that Ms X concocted or confabulated a detailed story accusing Dr. Gale of serious sexual abuse to destroy his life and home and professional career. Further, the Committee does not believe that she conspired with her mother to lie under oath. This speaks to a wickedness which was not demonstrated and is not in the Committee's view supported by a motive for revenge/ resentment for being fired for what she agreed was cause. The Committee believes that her actions in making a College complaint are those of a woman scorned in respect of events that happened to her at the hands of her doctor and wanting to see justice done. Aside from seeking justice, it is difficult to see any advantage to Ms X or her family by proceeding as she has done.

It is the Committee's considered judgment based on the evidence presented, that the allegation of sexual abuse involving sexual intercourse and oral sex between Dr. Gale and Ms X is proved.

Issue 2 - Did Dr. Gale's behaviour and interaction with Ms X, as her physician, constitute conduct or an act or omission relevant to the practice of medicine that was disgraceful, dishonourable or unprofessional? In particular, did the hiring of Ms X as the Gales' nanny and the subsequent interactions between Dr. Gale and Ms X (apart from the sexual relationship) constitute disgraceful, dishonourable or unprofessional conduct?

The College also submitted that, apart from whether sexual intercourse and/or oral sex occurred between Dr. Gale and Ms X, the hiring of Ms X, a patient of Dr. Gale's, and employment of her amounted to disgraceful, dishonourable or unprofessional conduct in all of circumstances, including considering the nature of the relationship that developed between Dr. Gale and Ms X apart from the alleged sexual relationship. The Committee agrees with this submission for the reasons set out below.

There was an obvious awareness by Dr. Gale that the simple hiring of Ms X as the family's nanny might have professional implications for him. That was evident from the testimony of Dr. Gale and Mrs. V who both testified that Mrs. V called the College and was allegedly told that there was no problem from the College's perspective and it was fine to hire Ms X (a patient) as the family's nanny.

Mr. C's testimony was clear in describing the process and procedures of the Public and Physician Advisory Service (PPAS) as well as presenting the accepted interpretation of the policy statement entitled Treating Self and Family Members. The Committee believes that the evidence he gave accurately portrays the long term policy of the College, and the training and practices of the front line staff in answering questions presented by members of the profession and public. He testified in a straightforward and cogent manner, and his testimony was not undermined during a vigorous cross-examination. It made sense in context including a consideration of the policy and practices of the College. His evidence was that the persons working in the PPAS, based on his knowledge of their training and practices, would never advise a physician that it was acceptable to hire a patient as a nanny.

In the College policy statement #7-06, Treating Self and Family Members (Exhibit 19), the principle concerning treatment is stated as, "The physician-patient relationship is the foundation

of the practice of medicine. The quality of this relationship can be compromised where there is a personal, emotional relationship beyond that of the doctor-patient relationship.” In the definitions of what constitutes a family member, the policy states, “...another individual in relation to whom the physician has personal or emotional involvement that may render the physician unable to exercise objective professional judgment in reaching diagnostic or therapeutic decisions.”

The policy goes through a series of self-questions that assist a physician in evaluating a relationship:

1. If this individual were my patient, could the personal relationship affect my ability to recognize and act in her best interests?
2. Would I be unable to allow this individual to make a decision about her own care that I had to disagree with?
3. Could the personal relationship affect my ability to be clinically objective?
4. Could I establish and maintain a proper physician – patient relationship if I were to treat this individual?

Mrs. V’s testimony was that she had twice called the College: first, when Ms X was hired to do nanny work but was not yet living in and second, when she was asked to become a live-in nanny. Mrs. V had no record of these calls but testified that both times she was told there was no problem from the College’s perspective.

Based on the testimony of Mr. C of the PPAS and a reading of the policy cited above, it is not reasonably possible to believe that persons working in PPAS or elsewhere in the CPSO would simply approve of the hiring of a patient over the phone and that there would be no record of it at the College. The Committee considers it possible that the advisors might have said it would not be advisable, rather than laying down a categorical “no.” In addition to there being no record of either call at the College, no record was kept by Mrs. V concerning these phone calls. The absence of a record in both places is odd if the calls were as Mrs. V described. One would have expected that as the office manager, Mrs. V would have kept a record of calls that she knew were

of major importance, in either Ms X's employment folder or in her own personal work log as office manager.

The Committee finds on this point that either no call was made at all or if one or more calls were made by Mrs. V, she likely minimized or failed to properly characterize the circumstances related to her inquiry to whomever she spoke to at the College such that she may not have received a categorical "no". In either case, the Committee rejects that Mrs. V was told by the College that it was fine for Dr. Gale to hire his patient as their nanny. The Committee has concluded that both Dr. Gale and Mrs. V knew that this arrangement was not sanctioned or approved of by the College.

The Committee does not rest its determination of the issue of whether the hiring and subsequent employment of Ms X as the Gales' nanny constituted disgraceful, dishonourable or unprofessional conduct by Dr. Gale on what Mrs. V was told by the College (if anything) about hiring a patient.

The Committee rests its finding on the disgraceful, dishonourable or unprofessional allegations on the interactions that Dr. Gale had with Ms X after she moved into the Gale household regardless of anything anyone at the College told Mrs. V. In particular, the Committee notes as follows (apart from the sexual intercourse and oral sex allegations):

- Dr. Gale participated in the hiring of a young female patient to work as his family's live in nanny. It is worth repeating that the medical issues for which Ms X was under the care of Dr. Gale were significant and ongoing. He created the circumstances under which an inappropriate relationship could and did develop;
- After hiring Ms X, Dr. Gale developed a personal and flirtatious relationship with Ms X which was inappropriate for him to have had with a patient. It included taking hot tubs and watching television together. The Committee repeats again that he referred to her as a NILF, made the GILF card with her and was involved in the breast flashing incident at Wal-Mart.
- The Committee accepts the evidence of Mr. B that he, Dr. Gale and Ms X all smoked marijuana together on one occasion in the garage of the Gale home when

Mr. B visited there in December 2007. Dr. Gale testified that this did not happen but the Committee rejects his testimony as not credible on this point. As the Committee has said, he was trying in his testimony to minimize his relationship with Ms X when the evidence taken as whole was clearly otherwise;

- Dr. Gale admitted to continuing to correspond with Ms X after she was fired and had been transferred to another ophthalmologist. While she was at that time no longer his patient, the time since discharge was minimal, and within the emails Dr. Gale concedes the term ‘boobs’ may have been used. While Mr. A says Dr. Gale was commenting on his daughter’s breasts in his emails, Dr. Gale testified that it was from a statement of Ms X in the email. The Committee has accepted the evidence of Mr. A that the reference to “boobs” came from Dr. Gale. Either way, utterances or the allowance of utterances of a sexual nature with this former patient speaks to a pattern of sexualized interaction which was inappropriate.

Dr. Gale admitted that his interactions with Ms X were immature, but tried to trivialize them by calling them “poking”. The Committee does not agree that the interactions were trivial or simply “immature”. Apart from the sexual abuse allegations which have been proved, the relationship that Dr. Gale had with Ms X was inappropriate before sex occurred and afterwards. The Committee finds the allegation that he engaged in conduct relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, is proved.

CONCLUSION

On the balance of probabilities the Committee finds as follows:

- The allegation of sexual abuse of a patient in the form of sexual intercourse and oral sex contrary to subsection 1(3) of the Code, is proved; and
- The allegation Dr. Gale has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, is proved.

The Committee requests that the Hearings Office schedule a penalty hearing pertaining to the findings made at the earliest opportunity.

**THE COLLEGE OF PHYSICIANS AND SURGEONS and DR. JEFFERY STEVEN
GALE**

Minority Opinion

Introduction

We have had the benefit of reading the reasons for decision of the Committee.

We agree with the reasons and conclusions of the Committee on the allegation of disgraceful, dishonourable or unprofessional conduct. It is clear that Dr. Gale and Ms X had a flirtatious and personal relationship and that it was inappropriate and unprofessional for Dr. Gale to have had such a relationship with a patient.

However, we disagree with the finding of the Committee on the allegation that the relationship between Dr. Gale and Ms X included sexual intercourse or oral sex. We find this allegation not proven on a balance of probabilities on the basis of clear, cogent and convincing evidence.

We agree with the Committee's statement of the applicable legal principles. We also agree with the Committee's recitation of the evidence given at the hearing. To the extent that we rely upon other testimony in coming to our conclusion, we will address it in our reasons.

There was very little documentary evidence to assist the Panel in its determinations. For example, there was virtually no e-mail correspondence in evidence. Some explanation was given for the lack of e-mail correspondence and we comment on this in our reasons. Although we recognize that corroborative evidence is not a legal requirement, the lack of it was surprising as it would have strengthened the evidence of the party relying on it. Ultimately, we decided the case on the evidence before the Panel. The reasons for our conclusions follow.

The Credibility of the Witnesses

As the Committee did in their reasons, we first set out a brief overview of our credibility assessments and expand upon it in a more detailed review of the evidence below.

Mr. B, Mr. C and Mr. A

We agree with the Committee's reasons and credibility assessments as concerns Mr. B and Mr. C.

As concerns Mr. A, we believe that he found printed paper that were email exchanges between Dr. Gale and Ms X, that they spoke to a personal relationship between them and referred to Ms X's "boobs". However, beyond these general observations, we find that he could not fairly recall the specific details of the emails, given his review of them was brief and many years ago. We agree with the Committee that the testimony of Mr. A supports other evidence that demonstrates that Dr. Gale and Ms X had a personal and flirtatious relationship, but does not prove that sexual intercourse and oral sex occurred.

Ms X

The credibility and reliability of Ms X is central to whether the allegations can be proved to the requisite standard.

We find Ms X's testimony regarding the events of her clinical care and the atmosphere in the house between her and Dr. Gale and the other members of the household in the main congruent with the testimony of other credible witnesses such as Mr. B and Ms F.

However, although Ms X remained composed throughout her testimony, in our view her testimony had a quality of being rehearsed. When presented with conflicting testimony or questioned about a potentially unflattering incident, she would respond, "I don't remember" or "the other person is lying". For example, she responded "don't remember" to the incident of the hanging of the Barbie doll to which others testified and which we considered would be a memorable incident. Another example is Ms X's "not remembering" the shredding of the nutrition book and mailing it to Mrs. V. That she denied having the Atkins book, because as a diabetic, she would not have been on Dr. Atkins' diet, suggests either that she did not realize that the book - which the joint book of documents showed was recommended to her by the nutrition clinic at the University - concerned glycemic indexes and was not a tome of the classic Dr. Atkin's diet, or that she lied about it. We find that she did receive the book and, as Ms F

recounted, she told Ms F she was going to shred it and send it to Mrs. V. We find her lack of memory on these points marred her credibility.

Inconsistencies between what she said in prior interviews and her testimony regarding some of her recollections were not of major importance. However, there were significant and problematic discrepancies between her testimony, her written calendar of events and the testimony of Ms F regarding the timing of some of the alleged sexual encounters and the Canada Day long weekend rendezvous.

Also, Ms X testified that her entire email account had been shut down; she lost all of her e-mails; she retained a lawyer; and, she tried to get assistance from the email company but it was not forthcoming. We found this testimony difficult to believe and thought there would have been some further confirmatory evidence than that which was tendered to support it.

Also, Ms X testified that prior to losing the e-mails, she had printed off some that related to exchanges with Dr. Gale but did not complete the printing process because she had only legal size paper and did not want to use it all up. This conflicted with her mother's testimony that the emails could not be printed because the printer was broken and that after they replaced the printer and went to print the e-mails, they were no longer available. We find this conflict in the evidence as to why the emails were not printed troubling.

There were two isolated email exchanges with Ms X's friend Ms G in Town D. These emails were admitted not for the truth of their contents but to rebut any defence theory of recent fabrication, i.e., that after being fired, Ms X fabricated a story regarding a sexual relationship with Dr. Gale. In any event, we were given no context for these email exchanges. We observe that if the two email exchanges were available, likely others would have been available to provide some context. We believe these emails do not provide evidence that sexual intercourse and oral sex occurred.

We do not believe that Ms X was seeking money from the Gales as Dr. Gale stated in his testimony. However, in our judgement it is possible that Ms X was very angry and felt rejected. She was angry with Mrs. V for the firing and she was upset with Dr. Gale when he ended their personal relationship in August 2008. Ms X had a distinct and, based on the testimony of the

others, a prejudicial and slanted view of Mrs. V. We accept Ms F's evidence that Ms X told her she was "going to take [Mrs. V] down, and she didn't care if [Dr. Gale] went with her."

In summary, we find Ms X's descriptions of the friendly, informal and flirtatious household environment, where sexualized language was commonly used, and her close interactions with Dr. Gale where supported by Mr. B, and Ms F, reliable. In other respects, as noted above, we find Ms X's testimony not credible or not sufficiently reliable on a number of key points

Mrs. D

Mrs. D had no first-hand knowledge of whether there was a sexual relationship between Dr. Gale and her daughter. However, Mrs. D testified regarding one key event - whether Dr. Gale slept in the same bed as her daughter the night of June 2 before her surgery on June 3.

Mrs. D's devotion to her daughter was apparent and heartfelt, and we have no quarrel with her care and concern for her. Her daughter, a brittle diabetic, would benefit from having a doctor to care for her in the long run. Yet we find her story, confirming her daughter's version of events, that as a mother, she would encourage Dr. Gale to sleep in the same bed as her daughter the night before he was to perform surgery on her not credible. There is no question that Mrs. D has an interest in the outcome of the hearing. Mrs. D had an interest in supporting her daughter in the hearing and in supporting Ms X ending up in a long-term relationship with Dr. Gale.

Mrs. D gave her testimony forcefully and yet seemed to shape it to avoid, whether consciously or unconsciously, seeing her own actions in the relationship with Dr. Gale as inappropriate as she saw others. Mrs. D's view that the sexually graphic doll she made for Dr. Gale was an artistic creation and an appropriate gift, while his Valentine card to her was inappropriate and "over the line", was unconvincing and led us to find that she had blind spots in her view of the events.

Mrs. D's dislike and judgment of Mrs. V was palpable and evident, and not congruent with testimony from witnesses we found to be credible regarding the overall nature of Mrs. V's relationship with her children and with the other babysitters and nannies.

Mrs. D's stated anger towards Dr. Gale caring for her daughter professionally and her encouragement of their personal relationship were incongruous. She described her dislike for

him over time, yet continued to speak with him after her daughter was fired and willingly facilitated an alleged weekend rendezvous between them. Her stated values and purported actions did not match.

Considering her evidence as a whole and in relation to the other evidence, we find that her testimony lacked credibility and was tailored to support her daughter's version of the events of June 2/3 and the alleged weekend rendezvous, and her testimony as to why the emails were not printed did not support her daughter's evidence.

Dr. Jeffrey Gale

We had concerns about the manner in which Dr. Gale testified. Rather than give straightforward answers, he was evasive, using terminology like "it's possible", "guess so," and "not aware."

Dr. Gale's sought to minimize the relationship that he had with Ms X rather than acknowledge that they most certainly had a personal and flirtatious relationship. For example, rather than simply agreeing that he watched TV with Ms X, he would state "we all watch TV." He also attempted to paint Ms X's character to portray her as a person to be disbelieved because of her ease with her own sexuality, while glossing over his own role in the crossing of boundaries. His attempted first to deny then to minimize the obvious inappropriateness of the Valentine card he prepared with Ms X and sent to Mrs. D. His original denial to his own lawyer of any role in the making of the Valentine card until it was entered into evidence pointed to a lack of honesty, as a card of this nature would in our view not be something easily forgotten. He said that he did not believe that he referred to Ms X as a NILF when our assessment of Mr. B's evidence and other evidence in this same vein (the "GILF" card) makes it clear and obvious that he did refer to Ms X as a NILF. While he did admit to his behaviour in relation to Ms X and others as being, in retrospect, "immature", he tried more often to describe it as harmless and "poking," rather than acknowledging that it amounted to the sexualizing of a relationship with a patient. He saw no possibility that his clinical judgment could be affected by his close relationship with Ms X.

Dr. Gale's testimony that there were emails between him and Ms X but that all of his emails were "automatically deleted" or manually deleted as a matter of course was suspicious given that Dr. Gale acknowledged that at least one of the emails may have referred to Ms X's "boobs". It

appears quite convenient for Dr. Gale that those emails were not available and this gives further reason to doubt the credibility of his testimony.

In summary, we found his testimony to be self-serving and we prefer the testimony of Ms F, Ms E and Mr. B in terms of how events unfolded.

Even though we considered that Dr. Gale lacked credibility, it does not follow that the College proved to the requisite standard that sexual intercourse or oral sex occurred between Dr. Gale and Ms X.

Mrs. V

We agree with the assessment and reasons of the Committee as concerns Mrs. V's credibility relating to her evidence concerning her contacts with the College. Our assessment is that she had an interest in presenting her relationship with Dr. Gale as loving "best friends" and describing Ms X's character in disparaging terms, even though it was not relevant to the charge of sexual abuse. We also agree with the Committee that there may have been something more to Mrs. V's departure from the household in early June 2008 than the mere cancellation of the construction of a house, but this is conjecture because other reasons for her leaving were not forthcoming or confirmed in testimony or cross examination. Ms X gave the same perfunctory reasons as well.

In the circumstances, we gave little weight to her testimony except where it was well supported by other credible witnesses.

We differ with the Committee on the question whether Mrs. V was truthful when she gave evidence that she did not find her husband in bed with Ms X on the morning of June 3, 2008. Her evidence in this respect was supported indirectly by Ms F who we find to be credible for the reasons set out below. Accordingly, we accept Mrs. V's testimony that she did not find Dr. Gale in bed with Ms X on the morning of June 3, 2008. We also assess Mrs. V's account of the Barbie doll cemetery and the shredded Atkin's book as credible.

Ms F

Ms F remains in a close relationship with the Gales, however, less so than during the events in question. She is now married and developing a separate life. She also had an extremely close

relationship with Ms X including from Ms X's firing until their final phone call in August 2008. She was frank in describing the conflicting and shifting loyalties she had with Ms X and the Gales. While she obviously has an affection for the Gales she also had an affection for Ms X, Ms F's testimony concerning the different times she would have been at the Gales' house was consistent with the testimony of Mr. B, Ms E and the Gales.

There were inconsistencies between the transcript of her phone interview with the College and her testimony at the hearing, but these were relatively minor, and did not detract from the thrust of her testimony.

Ms F's testimony regarding the night of June 2 before Ms X's surgery on June 3, the weekend of June 7/8 and the Canada Day long weekend directly contradicted the testimony of Ms X and her mother. Based on the plausibility of the events and the evidence as a whole, we prefer Ms F's testimony to that of Ms X and Mrs. D regarding these matters and gave it greater weight in making our findings.

Ms E

Ms E testified in a clear manner. She described her situation as a single mother raising a child, working as both a Montessori teacher, and later, a teacher at another school, in a frank and unadorned manner. Her testimony as to the interactions at the Gale household was congruent with that of Mr. B. She has a close relationship with Mrs. V. They had been friends, prior to and during the events, and continue to be friends. She obviously disapproved of the behaviour of Ms X as it did not accord with her philosophy of propriety, and we took that into account in giving less weight to her testimony concerning Ms X's general demeanour.

On the matters in which she testified based on her direct observations, we found her credible and gave weight to her testimony. Her testimony regarding the factual events that she observed was not brought into question on examination.

Ms E testified as to her presence in the Gale home on June 9 to 12, 2008 and that Dr. Gale was sick in bed with a migraine headache and vomiting during that time. This had a direct bearing whether there was a sexual relationship between Dr. Gale and Ms X during that time.

Issue 1 - Did Dr. Gale engage in sexual intercourse and/or oral sex with Ms X while she was his patient?

As previously indicated, we find that the allegation of sexual intercourse and/or oral sex not proven. In addition to our credibility assessment overview, we provide the following analysis in support of our conclusion.

The alleged sexual relationship spanned the period from May 13, 2008 to the July 2008 Canada day long weekend. We reviewed the various events in relation to each other and found it helpful to break down the analysis of the alleged sexual relations along the following timelines (as the Committee did):

- a) the events of May 2008;
- b) the events of June 2 and 3, 2008;
- c) the events of June 6 to 12, 2008;
- d) the Canada Day weekend; and
- e) the Chapter's meeting and other post firing events.

1(a) - The Events of May 2008

Ms X testified that Dr. Gale came to her room in Florida when she was in pain and crying from her eye bleed, lay down beside her, and told her that he loved her. They returned home from Florida on May 10. On May 11, Ms F moved into the house, adding another person to the household.

Ms X testified that on May 13, Dr. Gale came down to her room, awakened her, and climbed into bed with her. She stated that at that time, she performed oral sex on him. He stayed for an hour and then went back to his room. On the next day, May 14, she testified that after an eye appointment where she had local anaesthesia and a vitreous injection, she and Dr. Gale went down to his private office and performed oral sex on each other around 6 p.m. According to the medical chart, it appears that she did not receive the injection until 7:30 p.m.

Ms X also testified to sexual relations occurring on a number of nights in May 2008 after May 13/14 when she said that Dr. Gale would come to her bed from time to time.

There are a number of problems with this evidence. First, in her email to her friend, Ms G, of May 14, 2008, referring to the alleged sexual relationship with Dr. Gale, she stated that “nothing happened last night” before the injections occurred. This contradicted both her testimony and her note in her calendar that sexual relations had occurred on May 13. Second, although not inconceivable, it seems unlikely to us that Dr. Gale would make regular trips to Ms X’s bed during the night while his wife was at home and they were sleeping in the same bed and Ms F was also sleeping in the house. Third, we find it improbable that Ms X and Dr. Gale would have had a sexual encounter on May 14, after she had just received an eye injection and was expected home. Fourth, there is a discrepancy between Ms X’s recollection that the oral sex on May 14 happened at 6:00 p.m., after the eye injection, and the chart, which appears to show that she received the injection at 7:30 p.m. and therefore, on her timeline, the alleged sexual encounter would have to have happened after 7:30 p.m., an hour and a half later than she recalled.

We find that the alleged sexual relations in this time period not proved. There were significant discrepancies between Ms X’s testimony and the contemporaneous documentary evidence in relation to both the May 13 and May 14 events. There were also inherent improbabilities in the events taking place as described by her. We also took into account the significant conflicts in the evidence regarding the other alleged sexual events as described below that detracted generally from Ms X’s credibility.

We note that although we have reached this conclusion on the evidence, it was in no way based on the argument that Ms X should have seen Dr. Gale’s so-called “third nipple” or a scar on his body. These arguments played no role in our determinations.

1(b) - The Events of June 2 and 3, 2008

Ms X testified that she returned home from [state where Mr. B lived] on Sunday, June 1. She was scheduled for major eye surgery on Tuesday, June 3. She said that on June 2, while her mother was there and sleeping with her, Dr. Gale came downstairs to seek help for Mrs. V with the baby. After discussions with Mrs. D, Mrs. D went upstairs to help with the baby and Dr. Gale ended up sleeping (and having sex) in Ms X’s bed with her for the rest of the night until Mrs. V came downstairs and woke them up in the morning. She testified that when Mrs. V came to wake them up they pretended to be asleep and that only moments earlier they were having oral sex.

Mrs. D confirmed significant parts of this story in her evidence. She testified that she was downstairs in her daughter's bedroom when Dr. Gale came to her and Ms X at about 1 a.m. and indicated that the baby was sick and he needed a good night's sleep. Mrs. D said that she suggested that Dr. Gale sleep with Ms X in her bed and he asked Mrs. D to help Mrs. V with the baby upstairs. Mrs. D testified that she then went upstairs and helped Mrs. V with the baby in the kitchen and then Mrs. D slept in XYZ's bed. Mrs. D testified that the next morning, she sent Mrs. V downstairs to Ms X's bed to wake up Dr. Gale and Ms X and that none of this fazed Mrs. V and that they laughed about the fact that Dr. Gale was sleeping in the same bed as Ms X.

Dr. Gale and Mrs. V denied that this had happened.

Ms F testified that she was present in the house and sleeping upstairs that same night before the surgery. She said that she was present in the house because she was needed to help as Ms X was having her surgery the next day.

Considering all of the evidence on this point, we are not satisfied that the events on June 2/3 transpired as Ms X and Mrs. D said they did.

First, that Mrs. D suggested that Dr. Gale get a good night's sleep in the bed with her daughter while she, Mrs. D, would go up to sleep with XYZ in his room and to assist Mrs. V in XYZ's care, is highly improbable in light of Mrs. D testifying that she had previously confronted Dr. Gale about his closeness with her daughter and that she would not allow her own husband to be that close to a nanny. Further, that Ms X's mother would find it perfectly normal to have her daughter's doctor sleep with her daughter as a way of getting him rest, begs belief.

Second, we believe that it makes sense that Ms F was in the house at that time, as she was needed as Ms X would not be available for child care post-surgery. If she was sleeping in XYZ's room, as she testified, she would have seen Mrs. D and she said these events did not occur as Mrs. D said they did. We accept Ms F's testimony on this point.

Third, the testimony of Mrs. D that Mrs. V was unsurprised and not concerned to find her husband in Ms X's bed, just moments after Ms X claims Mrs. V interrupted them at oral sex and caused them to pretend to be asleep, is fantastical and not credible.

Fourth, the evidence that Dr. Gale would think that he could openly sleep and have sex with Ms X in her bed the night before her surgery and that no concern would be raised by others including his wife is not probable.

On the balance of probabilities, we find that the allegation of sexual relations on June 2/3, 2008 not proved.

1(c) - The Events of June 6 to 12, 2008

On Friday, June 6, testimony from many witnesses confirms that Mrs. V suddenly left the house to go to the Bahamas. Both Dr. Gale and Ms X testified that on Saturday, June 7, 2008, Mrs. V phoned Dr. Gale, ordering him to fire Ms X and he did so at that time. Ms X further testified that Ms F took the children away for the weekend to her parents' farm in Town J, leaving Dr. Gale and Ms X alone and they proceeded to have sex together in the master bedroom which continued throughout the week with Ms X testifying that they had the house to themselves until she left on June 12, 2008.

There are a number of significant problems with this evidence.

Photographs in evidence show that Ms F was in Town J on May 25, 2008, and not on the June 7/8 weekend when Mrs. V was away as testified to by Ms X. Also, Ms X testified that Ms F used Ms X's camera to take the photographs; the evidence was clear that the camera belonged to Ms F's sister. Further, Ms F has testified that when Mrs. V left, she requested that Ms F act in *loco parentis*, and Ms F said that as a responsible person, she would not have left the children alone as Ms X was still post-surgery and not capable of dealing with the children. This made sense to us.

As to testimony from Ms X that she and Dr. Gale spent the next few days having sex with the house to themselves, according to Dr. Gale, and confirmed by the testimony of Ms E, he had a migraine headache, and Ms F was there at all times. While it is possible that Ms F, as she testified, took the children out at times to parks and to walk with them, the knowledge that Ms F would return home at any time would likely prevent Dr. Gale and Ms X from spending time in bed together, in any case. We believe that Ms F was there during this time. Also, Ms E's testimony confirms that Dr. Gale had a migraine headache during that time and that she was staying overnight at the house from Monday (June 9) to Thursday (June 12).

This analysis speaks to the improbability of the events as described by Ms X and brings into doubt her credibility concerning the overt sexual events. We find that the allegations of sexual relations in the June 6 to 12, 2008 timeframe not proved.

1(d) - The Canada Day Long Weekend

Sexual relations are alleged to have occurred on one night over a four day holiday weekend on Saturday, June 28 through Tuesday July 1, 2008. We recognize that Ms X was no longer Dr. Gale's patient at this time so that if sex did occur, it would not be sexual abuse of a patient although it would be unprofessional conduct given that the doctor/patient relationship had ended not even three weeks before. Also, the events of this weekend were connected to the narrative of events and part of the totality of the evidence in relation to whether sex had occurred earlier, when the doctor/patient relationship was still extant.

All witnesses agree that Mrs. V was away in Las Vegas on a planned trip with her mother, and that Dr. Gale, along with Ms F and the children, were attending a family reunion in Town E. They had one room, which had been booked by Mrs. V, in which there were two beds used by the two boys, Ms F, and Dr. Gale. Ms X has stated that there were plans in advance, with Ms F's collaboration, to allow Dr. Gale to come visit Ms X at her parents' home nearby. According to Ms X's testimony, her mother had agreed to make space for them to have a weekend alone. We note that according to this testimony, Mrs. D encouraged the illicit relationship that she said upset her. According to Ms F, and confirmed by Dr. Gale, they stayed at the hotel Friday through Sunday, returning to Town B on Monday (June 30). According to the calendar prepared by Ms X, the plan was for Dr. Gale to come visit her on Saturday June 28, and that this is what happened. According to Ms X, Ms F did not know that this was to be an overnight meeting. According to Ms X's testimony, Dr. Gale and Ms X planned that in the morning after Dr. Gale spent the evening and night at her parents' house, Ms X would call Ms F to inform her that, due to drinking, Dr. Gale stayed overnight and was on his way back.

There are a number of significant difficulties with the evidence relating to this scenario. The first is that Ms X changed her testimony as to the timing of the events in re-examination. Having said in cross-examination and in her calendar that Dr. Gale came on June 28, when shown her email

to Ms G and a phone record showing a call to Ms F on July 1 at 8:21 a.m., she said that Dr. Gale must have come on Monday, June 30 and stayed overnight that night.

The second problem is that Ms F testified they returned to Town B on June 30. Ms F's testimony on whether she and Ms X had planned that Dr. Gale should use an ATM machine to give him some form of a cover story before he went to visit Ms X was quite odd. When asked to comment all she said was "It's pretty sneaky. It sounds like a pretty good idea, but it wasn't mine." Nevertheless, she clearly said that they returned on Monday (June 30), directly contradicting Ms X's revised testimony that Dr. Gale visited her that night. Ms F was not challenged on this evidence.

Third, if the plans were that Dr. Gale was to stay overnight, then waiting to make a phone call until morning, to inform Ms F after she had the children all night as to the whereabouts of Dr. Gale, seems unduly capricious.

Fourth, we were struck by the fact that the email sent by Ms X to Ms G on the morning of July 1 following the alleged night at Ms X's parents' house in Town A during the visit to Town E was sent prior to Ms X calling Ms F. According to Ms X, she called Ms F as soon as Dr. Gale left her house so as to assure her that he was coming and had stayed over only because of having drunk too much alcohol to drive in the evening. This was intended to prevent Ms F from knowing or suspecting that Ms X was having a sexual relationship with Dr. Gale. If keeping Ms F from knowing of a sexual relationship with Dr. Gale was paramount, surely the call to her would have taken precedence over a vividly descriptive email to Ms G.

Finally, we note as well that the emails to Ms G describing sex between Ms X and Dr. Gale were not admitted for the truth of their contents. Even if they had been, the content and responses in the emails that were given to us, in isolation, could be a description of sexual events that occurred, although there are discrepancies in the described timing on two occasions, or could easily be interpreted as part of a pattern of exaggeration and competition between them.

We find the allegations of sexual relations made by Ms X during the Canada Day weekend not proved.

1(e) - The Chapter's Meeting and Other Post Firing Events

Ms X and Ms F were still friends at the time of the meeting with Dr. Gale at Chapters and Ms X's meeting with Dr. Gale at his office. Ms X was visiting Ms F at her parents' farm near Town J. Dr. Gale said he did not know that Ms X would be coming, but Ms F says that she had informed him. We believe Ms F.

Ms X also testified that at the end of the meeting, Dr. Gale kissed her on the lips while Ms F, in her testimony, denies that this happened. Dr. Gale may have but it is not necessary for us to make a finding one way or the other.

Ms X testified that she had made arrangements to meet Dr. Gale in his office on the next day. She stated that she later picked up some lunch that she thought he would like, and arrived at his office. She also stated that he tried to take off her blouse in the office at that time. Dr. Gale testified that she arrived without his knowledge and demanded \$50,000 from him. Considering Dr. Gale's credibility and the lack of any written record of a demand for money by Ms X and a consideration of the evidence as a whole, we do not believe that there was ever a demand for money by Ms X. As to the testimony that Dr. Gale would attempt a sexual overture at his office with his secretary present in the next office, we are not satisfied on the evidence to find that that occurred.

As to the final phone call between Ms F and Ms X, we accept Ms F's version of the call, namely that Ms X was drunk and said that she was "going to take [Mrs. V] down, and she didn't care if [Dr. Gale] went with her."

CONCLUSION

On the balance of probabilities we conclude as follows:

- The allegations of sexual abuse in the form of sexual intercourse and oral sex contrary to subsection 1(3) of the Code are not proved; and
- The allegation that Dr. Gale has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would

reasonably be regarded by members as disgraceful, dishonourable or unprofessional is proved.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Jeffrey Steven Gale, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names of the children of Dr. Gale under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

The Committee also made an order to prohibit the publication of the identity and any information that would disclose the identity of the sexual misconduct witness 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 offense and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offense and not more than \$50,000 for a second or subsequent offense; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offense and not more than \$200,000 for a second or subsequent offense.

Indexed as: Gale, J. S. (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. JEFFREY STEVEN GALE

PANEL MEMBERS:

DR. P. CHART (CHAIR)
D. GIAMPIETRI
DR. M. GABEL
S. BERI
DR. C. LEVITT

Penalty Hearing Date: March 4, 2014
Penalty Decision Date: March 4, 2014
Release of Written Reasons: April 17, 2014

PUBLICATION BAN

PENALTY AND REASONS FOR PENALTY

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario delivered its written decision and reasons on finding in this matter on December 13, 2013, and found that Dr. Jeffrey Steven Gale committed an act of professional misconduct, in that he sexually abused a patient, 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.

The Committee heard submissions on penalty and costs on March 4, 2014, and delivered its penalty and costs order with written reasons to follow.

The Committee’s Decision of December 13, 2013

Dr. Jeffrey Gale is an ophthalmologist with a retinal subspecialty, practising at Hospital 1 in Town B. Ms X was a patient of Dr. Gale from January 2007 to June 2008. She was 23 years of age when she first became a patient of Dr. Gale’s in 2007. The medical issues for which Ms X was under the care of Dr. Gale were significant and ongoing. In approximately August 2007, she became employed as a nanny at Dr. Gale’s home. She lived there in a basement room starting in approximately November 2007. She was terminated as the Gales’ nanny in the first week of June 2008, after Dr. Gale performed surgery on her in June 2008.

In its decision of December 13, 2013, the Committee found that Dr. Gale engaged in the sexual abuse of Ms X, having sexual intercourse and oral sex with her. The Committee also found that Dr. Gale engaged in disgraceful, dishonourable and unprofessional conduct by, among other things and apart from having sexual intercourse and oral sex with her, having developed a personal and flirtatious relationship with her which was inappropriate for him to have had with a patient. It included taking hot tubs and watching television together. He also allowed for utterances of a sexual nature with this patient and engaged in a pattern of sexualized interaction which was inappropriate.

SUBMISSIONS ON PENALTY

Counsel for the College submitted that the appropriate penalty in this matter was revocation of Dr. Gale's certificate of registration, a reprimand, costs of the hearing, including the penalty hearing (ten days at tariff), and reimbursement of the College for funding for patients under the program required under section 85.7 of the Code. Counsel for the College submitted that in light of the findings of the Committee, both the reprimand and the revocation of the member's certificate of registration were mandatory under the Code and that the section 85.7 order for reimbursement of the fund for patient therapy and counselling was appropriate in the circumstances.

Counsel for the College read Ms X's Victim Impact Statement into the record.

Counsel for Dr. Gale was in attendance at the penalty hearing but made no submissions.

THE LEGISLATION

Section 51 (5) of the Code states:

(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

1. Reprimand the member.
2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following,
 - i. Sexual intercourse,
 - ii. Genital to genital, genital to anal, oral to genital, or oral to anal contact,
 - iii. Masturbation of the member by, or in the presence of, the patient,
 - iv. Masturbation of the patient by the member,
 - v. Encouragement of the patient by the member to masturbate in the presence of the member.

Section 51 (6) of the Code states:

(6) Before making an order under subsection (5), the panel shall consider any written statement that has been filed, and any oral statement that has been made to the panel, describing the impact of sexual abuse on the patient.

DECISION AND REASONS ON PENALTY

The Committee agrees with the submissions of the College that the reprimand and revocation of the member's certificate of registration are mandatory on the facts of this case. In addition to the legal requirement for revocation and a reprimand, the Committee makes the following comments.

Victim Impact Statement

The Committee considered the content of the Victim Impact Statement provided by Ms X which described the impact of Dr. Gale's misconduct on her life, her self- image, her sense of betrayal and particularly, her trust in the medical profession.

The impact is poignantly expressed by Ms X in her Victim Impact Statement as follows:

I was left feeling used, ashamed, worthless and broken. I had believed Dr. Gale was honest and trustworthy, that I could believe what he told me, and that he truly loved me and had my best interest at heart as a friend, employer and doctor. I was called a liar, a thief and a gold digger and made to feel that I was to blame for our relationship, adding to the emotional downward spiral.

I lack the ability to trust in relationships I form. I feel judged when I have doctor's appointments and I am aware they know who I am and what I've been involved with in the medical community.

I am always second guessing the thoughts and judgments people have when I am present. It takes enormous energy to refuse to succumb to being a victim, to function as a part of society and to trust the people in my life.

Revocation of the Member's Certificate of Registration

The sexual abuse as found in this case, including sexual intercourse and oral sex, is of the most serious nature. Such actions betray not only the trust patients place in their treating physician but the trust that the public have in the profession. This trust is fundamental and reflects a professional duty inherent to the practice of medicine. Nothing short of separation of the member from the profession will suffice when such sexual abuse of a patient occurs.

Dr. Gale has academic standing and teaching responsibilities as an assistant professor at University J. The profession looks to its teachers to present role models for young physicians in training. This makes Dr. Gale's misconduct all the more grave. The consequences to the profession and the public are significant.

Revocation serves to denounce the misconduct from the perspective of the profession and the public. Further, revocation will be a specific deterrent to Dr. Gale and will illustrate clearly to the profession that such conduct is unacceptable and irreconcilable with medical practice. In addition, revocation demonstrates to the public that the profession will not tolerate such behaviour.

Reprimand

A reprimand provides the opportunity for the Committee to speak directly to Dr. Gale regarding the nature and impact of his professional misconduct. Ms X was Dr. Gale's patient and the medical issues for which she was under his care were significant and ongoing. Given the findings of the Committee, that Dr. Gale took advantage of a vulnerable young woman for his own purposes is clear.

Funding Order under Section 85.7

Section 51(2) of the Code provides, in part, as follows:

(2) If a panel finds a member has committed an act of professional misconduct, it may make an order doing any one or more of the following:

...

5.1 If the act of professional misconduct was the sexual abuse of a patient, requiring the member to reimburse the College for funding provided for that patient under the program required under section 85.7.

5.2 If the panel makes an order under paragraph 5.1, requiring the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 5.1.

Section 85.7 of the Code provides, in part, as follows:

85.7 (1) There shall be a program, established by the College, to provide funding for therapy and counselling for persons who, while patients, were sexually abused by members.

...

(4) A person is eligible for funding only if,

(a) there is a finding by a panel of the Discipline Committee that the person, while a patient, was sexually abused by a member; or...

(7) A person who is eligible for funding is entitled to choose any therapist or counsellor...

(8) Funding shall be paid only to the therapist or counsellor chosen by the person.

(9) Funding shall be used only to pay for therapy or counselling and shall not be applied directly or indirectly for any other purpose.

(10) Funding may be used to pay for therapy or counselling that was provided at any time after the sexual abuse took place.

Considering the above provisions, the Committee agrees with the submissions of the College that Dr. Gale should reimburse the College for any funding provided for Ms X under the program required under section 85.7, and therefore Dr. Gale should post an irrevocable letter of credit or other security acceptable to the College. The amount of \$16,060.00 is the maximum permitted by the regulation and is appropriate in the circumstances.

COSTS

Section 53.1 of the Code provides:

In an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct or finds to be incompetent to pay all or part of the following costs and expenses:

1. The College's legal costs and expenses.
2. The College's expenses incurred in investigating the matter.
3. The College's costs and expenses incurred in conducting the hearing.

As to costs in this matter, the Committee agreed with the position of the College that costs should reflect ten days of hearing time at the accepted tariff of \$4,460.00 per day. This cost is rightly borne by the member and not the membership at large. While the actual hearing, including the penalty hearing, was eleven days, the Committee noted there was time lost for illness of approximately one day and the member is not accountable to pay for the costs of that day.

Summary

The penalty order sought by the College and made by the Committee as set out below is in keeping with the legal requirements as concerns the reprimand and revocation, and in the Committee's view, represents appropriate sanctions in this matter.

ORDER

On March 4, 2014, the Discipline Committee ordered and directed that:

1. the Registrar revoke Dr. Gale's certificate of registration effective immediately.
2. Dr. Gale appear before the panel to be reprimanded.
3. Dr. Gale reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College within 30 days of this Order, in the amount of \$16,060.00.
4. Dr. Gale to pay costs to the College in the amount of \$44,600.00 within thirty days of this Order.