

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Peter John Brown, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name of the patient in this matter or any information that could disclose the name or identity of the patient under subsection 47 (1) 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.

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 offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v.
Brown, 2015 ONCPSD 20**

**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. PETER JOHN BROWN

PANEL MEMBERS:

**DR. P. CHART (CHAIR)
D. DOHERTY
DR. E. STANTON
S. BERI
DR. P. TADROS**

Hearing Dates: July 14 to 17, 2014
Decision Date: May 20, 2015
Release of Written Reasons: May 20, 2015

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario (“CPSO”) heard this matter at Toronto on July 14 to 17, 2014. At the conclusion of the hearing, the Committee reserved its finding.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Brown committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”) in that he engaged in the sexual abuse of a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in 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. Brown denied the first allegation in the Notice of Hearing, that he engaged in the sexual abuse of a patient. Dr. Brown admitted the second allegation in the Notice of Hearing, that he has engaged in 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.

ISSUES

Sexual Abuse

1. Did Dr. Brown and Ms A have a concurrent sexual and a doctor patient relationship?

2. If so, what was the nature and extent of the sexual relationship, and in particular, did the sexual relationship include oral sex and/or sexual intercourse?

Disgraceful, Dishonourable or Unprofessional Conduct

Does the Committee find that the evidence supports a finding of disgraceful, dishonourable or unprofessional conduct as admitted by Dr. Brown?

LEGISLATION

The jurisdiction of the Committee to make a finding of professional misconduct derives from section 51(1) of the Code, which provides, in part:

51. (1) A panel shall find that a member has committed an act of professional misconduct if,
- [...]
- (b.1) the member has sexually abused a patient;
 - (c) the member has committed an act of professional misconduct as defined in the regulations.

(i) Sexual Abuse

Subsection 1(3) of the Code provides that “sexual abuse” of a patient by a member means,

- (a) sexual intercourse or other forms of physical 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.

The Code also provides in subsection 1(4):

- (4) For the purposes of subsection (3),

“sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

To fall within the meaning of sexual abuse as defined in the legislation, the Committee must find the alleged sexual misconduct occurred with a patient. A finding of sexual abuse is not made out if a physician engages in sexual activity with someone other than a patient. If the sexual activity occurred with someone other than a patient, such as a former patient, the circumstances may still give rise to a finding of disgraceful, dishonourable or unprofessional conduct.

(ii) Disgraceful Dishonourable or Unprofessional Conduct

Paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”) provides:

1. (1) The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:
 33. 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.

There is no statutory definition of “disgraceful, dishonourable or unprofessional”.

BACKGROUND

Dr. Brown received his medical degree in 1996 from the University of Ottawa. He then completed a two year residency program in Family Medicine. Initially, he worked at a walk-in clinic in City 1. Dr. Brown began working at the Student Health Services at a University in Ontario in 2004 where he provided supportive psychotherapy to the university student population.

In 2010, Ms A was in her mid-twenties and a student at a University in Ontario. She had called the Student Health Services requesting to see a counselor because she was feeling very anxious and stressed about an upcoming court case involving her assailant. In the

summer of 2010, Ms A had reported to the police that she had been sexually assaulted by her assailant ten years earlier. Her assailant was arrested and charged. The Crown attorney had contacted Ms A and indicated to her that there would be a court case. Ms A felt that she required support in dealing with the court process. She stated that she was not coping well at the time and she requested counseling. It was affecting her social life and resulted in her missing a number of her university classes. In her testimony, she described a particular instance where she got on a bus, had a panic attack and had to get off the bus to calm down before she could get back on the bus. Ms A's assailant lived in the same city as Ms A and they knew the same people. Ms A feared running into her assailant in social situations such as in a restaurant, bar, or on the bus.

FACTS AND EVIDENCE

Ms A could not recall when she first saw Dr. Brown but testified that she believed it was in August or September of 2010. Her medical records indicate that she first saw Dr. Brown in September 2010.

Initially, Ms A saw Dr. Brown in his office every two weeks. Each counseling session lasted approximately one hour. Her recollection was that Dr. Brown would sometimes make notes and other times not. She testified that she addressed Dr. Brown by his first name "Peter" because that was how he introduced himself to her. Dr. Brown also provided Ms A with his personal email address. She testified that Dr. Brown told her that if Ms A needed to communicate with him outside office hours that she could contact him via his email.

Ms A testified that initially, the appointments were booked through the reception area at the Student Health Services but once she started seeing Dr. Brown on a regular basis, Dr. Brown would schedule the appointments himself.

In the first four months, Ms A discussed the court case, her anxiety and stress, the supports in her life, the relationship with her boyfriend, school and her relationship with her mother. Ms A's evidence and Dr. Brown's evidence were consistent with respect to

the matters they discussed. At the time she began therapy, she had been in a relationship for about four years and had been living with her boyfriend for about three years. She described her relationship with her boyfriend between September and December 2010 as “really good”.

Ms A described the first few months as “difficult” for Dr. Brown because she had difficulty opening up to him. She testified that Dr. Brown worked “very hard” to build trust and to get her to “open up”. Ms A testified that initially it was very difficult for her to share with someone she did not know “the awful things” that happened to her.

In November 2010, Ms A emailed Dr. Brown to indicate that that she had not been doing well, had been withdrawn and anxious and had been missing classes. In his response to her email, Dr. Brown offered her an appointment the next day if she wished and further offered to speak with her on the phone between 5 to 7 p.m.

Ms A testified that by December 2010, she and Dr. Brown were building a good therapeutic relationship. While she was able to trust Dr. Brown and was more willing to talk and share more, she testified that she was still not coping very well with her anxiety.

Between January and April 2011, Ms A attended weekly appointments with Dr. Brown. Ms A testified that during this time, her relationship with her boyfriend was becoming strained. Her boyfriend was not interested in sex with Ms A and this frustrated her. Ms A testified that she felt that the reason that her boyfriend was not interested in having sex with her was that she was not “good enough or pretty enough”. She testified that she told Dr. Brown about the changes in her relationship with her boyfriend. Dr. Brown confirmed this was a matter they discussed in their sessions.

Ms A testified that during this period, Dr. Brown began sharing personal information with Ms A. He told her he was not married any longer and his ex-wife’s occupation and place of work. She learned that he had three children and details about them. He told her what school they attended. He also told her he enjoyed painting and yoga.

Ms A testified that by April of 2011, she had become very attracted to Dr. Brown and she cared what he thought of her. She enjoyed spending time with Dr. Brown and was starting to feel like she wanted to see him outside of therapy. She did not share these feelings with Dr. Brown. She testified, however, that she disclosed to her boyfriend that she was having different feelings for Dr. Brown, although she did not tell her boyfriend that she was attracted to Dr. Brown.

By the end of April 2011, the court case involving her assailant was still being adjourned and this remained a source of continued stress. Nevertheless, at this point, she was managing her anxiety a little better. The school year was wrapping up and she had received news that she had been accepted for a summer job at Hospital X in City 1.

Between May and July 2011, she worked at Hospital X. She would stay in City 1 for a period of time and then return to City 2 for a period of time. She continued to see Dr. Brown regularly during this period.

It was during this period that Ms A put together some music on a jump drive and gave it to Dr. Brown during one of their visits. On a date in July 2011 at 11:58 p.m., Dr. Brown sent Ms A an email thanking her for the generous gift of music and at the same time wished her good night and added a "happy face". In addition, Dr. Brown put a thank you message on the "jump drive" when he returned it to Ms A.

Dr. Brown recommended that Ms A attend yoga classes as part of her therapy and provided her with a list of studios and instructors which he attended and would recommend. Ms A testified that her first yoga class was on a date in July 2011. She chose to attend Yoga Studio Y because that was one of the studios Dr. Brown had attended. He had indicated to her that it provided a very welcoming environment.

On a date in July 2011 at 11:53 p.m., Dr. Brown sent Ms A an email which provided advice on how to perform various yoga poses. Ms A testified that the email from Dr.

Brown made her feel very “special”. She replied in an email to Dr. Brown, “You are very thoughtful. Thank you so much for thinking of me. You’re the best, really, Ms A”.

During this period, Ms A testified that her relationship with her boyfriend was a “mess” and “falling apart”. She stated that the lack of a sex life was a problem for her. At the same time, Ms A was becoming “more and more attracted” to Dr. Brown. She saw Dr. Brown as the “perfect man” who did not judge her and thought she was great despite listening to “all these terrible things” about her. She testified that she wanted him to care for her. Ms A testified that she did have some insight at the time that this attraction might be transference. She discussed it with her boyfriend who recommended to her a book entitled “In Session”. The subject of the book was women and their relationships with their therapists. Ms A testified that at that point in time, she did not discuss with Dr. Brown the notion of transference or the feelings she had for him. While Ms A did recognize the possibility of transference, nevertheless, she testified that she was interested in Dr. Brown romantically.

Ms A testified that the first time she and Dr. Brown were in the same yoga class together was in the summer of 2011. This was a chance meeting. Ms A testified that during that class, she did not speak to Dr. Brown as she was embarrassed by him seeing her in a spandex outfit and seeing him “half naked”. Ms A testified that at her next appointment, she told Dr. Brown that she had seen him at the yoga class. Dr. Brown asked her why she did not say “Hi”. Ms A responded that she did not know if she was supposed to talk with him outside of session. Dr. Brown indicated it was “OK” to say “Hi”.

With the assistance of the printout of his yoga class attendance record, Dr. Brown testified that he attended Mr. B’s yoga class on a date in August 2011 at 8:30 p.m. Consistent with the evidence of Ms A, Dr. Brown testified that he was unaware at the time that Ms A was also at the same class. He testified that he did not see her at that class because he did not have his glasses on.

Ms A testified that during this period, she began having sexual dreams about Dr. Brown. While she would discuss particulars of her dreams with Dr. Brown, she did not disclose to Dr. Brown that he was the subject of her sexual dreams. Dr. Brown encouraged her to keep a journal documenting her dreams which she did. At one point, Dr. Brown asked Ms A if he was in her journal and she responded “yes”. He then asked if he would get to know what she had written about him and she replied “no”. During this period, Ms A indicated that the appointments were becoming more “social” and the discussions during the appointments became more personal.

Ms A testified that over the summer, her anxiety had improved as she was not in school and she was living in City 1 for periods of time. As a result, she did not have to worry about running into her assailant in City 1. The criminal matter was still being put over.

During an office appointment in August 2011, which was just prior to her leaving for City 3 for a week, Ms A testified that she and Dr. Brown made plans to go to a yoga class together at 8:30 p.m. on the Tuesday that she returned from her trip to City 3 - in September 2011. She wrote down the day and time on the back of the prescription that Dr. Brown gave her during the appointment to remind her of the day and time (exhibit 11). Dr. Brown’s evidence differs from Ms A’s evidence regarding these events. Dr. Brown testified that during the August 2011 appointment, Dr. Brown gave Ms A a prescription to treat her anxiety. Dr. Brown testified he recalled that he had a discussion during that appointment with Ms A about yoga and that he likely mentioned to her that his favourite instructor was “Mr. B” and that he had a class on Tuesdays at 8:30 p.m. Dr. Brown denied, however, making a plan with Ms A to attend Mr. B’s yoga class together in September 2011. He also denied seeing Ms A write “Tues Yoooga, 830” on the back of the prescription that he had given her at the appointment.

Ms A testified that on a Tuesday in September 2011, Ms A returned from City 3 and texted Dr. Brown in the afternoon to check if they were still on for yoga that day. Dr. Brown initially denied having any communication, text or otherwise, with Ms A prior to the yoga class that day. In cross-examination, however, he was shown a log of his cell

phone records and confirmed that Ms A texted him at 2:17 pm that day and he replied six (6) minutes later.

Dr. Brown and Ms A both agreed that they did attend the same yoga class and they set up their mats beside each other. Ms A testified that during the yoga class, Dr. Brown assisted her in certain yoga poses by holding her foot up. Contrary to Ms A's evidence, Dr. Brown denied that he helped Ms A with her yoga poses during that class and testified he did not have any physical interaction with Ms A during the class.

Following the class, Dr. Brown testified that he showered and changed, and when he walked into the lobby, he saw that Ms A was waiting for him. He denied that they had planned to meet after class. Ms A testified that after the class, she waited for Dr. Brown and they walked to her car. She recalled it was raining that night and she offered to drive Dr. Brown to his car. He testified that they walked to her car together and Ms A offered to give Dr. Brown a lift to his car, which he said he declined. Dr. Brown testified that at that point, Ms A invited him to go for a walk which they did. Following the walk, Dr. Brown agreed to go for a tea with Ms A. Ms A drove Dr. Brown in her car to Starbucks, after which they returned to Yoga Studio Y. Dr. Brown recalls the weather that evening as being dark and wet.

Both Ms A and Dr. Brown agree that while sitting in Ms A's car outside the Yoga studio, they engaged in conversation. During that conversation, Dr. Brown testified that he told Ms A that he felt like he had "feelings" for her and that, as a result, he did not think he could keep functioning effectively as her doctor. Ms A testified that Dr. Brown told her that he loved her. Ms A testified that she was frustrated, annoyed and upset by this disclosure. She did not understand why he was telling her that he loved her. Ms A testified that she asked him why he did not refer her to someone else and he responded that he felt she had loss and abandonment issues and he did not want to do that to her. Ms A testified that he also told her that he was hoping they could work through it in session. When asked by the College why she felt frustrated or annoyed, she stated, "Well, because I thought my feelings were normal. Like, I thought that is how girls felt when they had a

close relationship with their therapist.” Ms A could not recall precisely what happened next. She testified that they either went for a walk or she dropped him off at his car. Dr. Brown testified that after they talked, he walked to his car and drove home. Dr. Brown testified that at this point, he was unsure whether the professional relationship could continue. He simply did not know.

On the next day, Wednesday, in September 2011, Dr. Brown and Ms A texted one another from 11:39 a.m. until 10:03 p.m. There were a total of twenty (20) text messages between Dr. Brown and Ms A that day. Dr. Brown described the content of the text messages as “small talk” but he could not be sure if any text messages related to his admission of feelings for Ms A on the previous evening. Ms A testified that in these texts, they discussed their feelings for one another and how it would play out.

On cross examination, Dr. Brown agreed that it was “likely” that on that day, Wednesday, in September 2011, there was an arrangement made for Ms A to come to a previously unscheduled appointment in his office on the following day, Thursday, in September 2011. When asked what the purpose of this appointment was, Dr. Brown replied that it was “to meet and talk” and that he could not remember the details about having made the appointment.

With respect to the Thursday appointment in September, Dr. Brown testified “the appointment covered what I put in the notes”. There was no mention of discussions regarding their feelings in the note, with the exception of a vague reference to their personal situation. The note indicates that for a number of months, Ms A had questioned “coming here”. The note goes on to say that she would like to consider stopping her counseling. Dr. Brown denied that the purpose of the appointment was to terminate the professional relationship, so that he could act on the disclosure of his feelings for Ms A. During cross examination, it was put to Dr. Brown that the reason for arranging a previously unscheduled appointment with Ms A was to “end it” because he had come to the realization that he could no longer act as Ms A’s therapist. Dr. Brown denied this by saying he “wasn’t sure”. He testified that even at the time of this Thursday appointment,

he was unsure whether he could not continue to have a healthy psychotherapeutic relationship with Ms A, even after he had disclosed his feelings for her.

Dr. Brown testified that at the Thursday appointment, Ms A brought up aspects of her relationship with her boyfriend and also her university program. He testified that they also discussed ending their professional relationship, because Ms A did not feel that she needed therapy anymore. His note indicated that she had an appointment the following week and she would likely keep that as her final appointment. Dr. Brown testified he thought she had been improving, despite admitting that she had suffered a downward turn in her anxiety only a month earlier. He testified he agreed with her that she no longer needed therapy. Ms A's evidence regarding this session was that they continued to discuss their feelings and what effect this would have on their professional relationship. She testified she felt it was "weird" that he could bill OHIP for seeing her as she felt the time spent with him was personal time. She also testified that she could not be as open with him.

Following the Thursday appointment, there was more texting between Dr. Brown and Ms A on that day. Ms A testified that after this appointment, they then started to see each other socially. They would go for walks and during the walks, they would sometimes hold hands. They went to yoga classes together which was sometimes followed by lunch or brunch. They also began texting each other as well as going to Starbucks together. His evidence was consistent in that they texted, they went to Starbucks several times and for one walk.

Dr. Brown testified that the Thursday appointment was, in effect, the end of their therapeutic and professional relationship. There was, however, a scheduled appointment on the following Monday in September 2011, which was made prior to the Thursday appointment.

On the Friday after the Thursday appointment in September 2011, Dr. Brown and Ms A attended a yoga class together. Following that class, they texted each other between 1:56

p.m. and 2:27 p.m. There were no further text messages between them until 7:52 p.m. after which there was texting until 11:35 p.m. Dr. Brown testified that there was no contact with Ms A on that date in September 2011, other than the yoga class and texting. Ms A testified that after yoga, each would go home and shower then meet up for food. They then would spend the day together.

Both Ms A and Dr. Brown testified about a trip to Conservation Area Z to go for a hike. Ms A could not recall what day they went to Conservation Area Z together. Her personal day planner did not indicate the day. Dr. Brown testified that the trip took place on a Saturday in September 2011. Dr. Brown testified that he and Ms A drove to Conservation Area Z in Ms A's car. Dr. Brown could not remember if Ms A picked him up at his house, but said it was likely that she did.

After their hike, Ms A testified that Dr. Brown kissed Ms A in the car and that she returned his kiss. She testified that Dr. Brown also touched her face, shoulders and hair in an affectionate manner. Dr. Brown testified that while at Conservation Area Z, they walked and talked. Contrary to the evidence of Ms A, Dr. Brown denied that there was any physical contact between him and Ms A during or after the walk on that date. He testified that after their walk, they returned to City 2, stopped at Starbucks, got a drink, and talked for a while. Ms A then drove him home. Dr. Brown testified that Ms A dropped Dr. Brown off in his drive way and left. Dr. Brown denied that there was any further contact other than texting with Ms A on the Saturday in September 2011, after the outing to Conservation Area Z. Notwithstanding his evidence that he believed the professional relationship was over as of the Thursday appointment date in September 2011, he repeatedly asserted there was no physical contact during the trip to Conservation Area Z.

Ms A testified prior to having sex with Dr. Brown, he had given her a body hug pressing his pelvis into her and rubbing his hands up and down her back. This took place in Dr. Brown's driveway, but she could not recall the date.

Ms A testified that they first had oral sex or intercourse after they went to Conservation Area Z but could not recall whether it was on the night of the Conservation Area Z outing or the next day. With respect to the number of occasions that they had sex together, Ms A testified that they had oral sex less than five times and had sexual intercourse on two occasions. As will be described in further detail below, Dr. Brown's evidence is that he did not engage in any form of physical contact with Ms A until the evening of the Monday appointment in September 2011.

On the Sunday morning in September 2011, Dr. Brown attended a yoga class with Ms A. Dr. Brown denied that there was any further contact with Ms A after the yoga class, other than texting. Ms A testified that after yoga, each would go home and shower and then meet up for food and then hang out. She also testified that she had dinner at his home and described in detail the nature of the food. While she did not specifically recall the date of the dinner, she did testify that it was not planned but occurred while they were hanging out. After dinner, they moved to the couch and engaged in sexual acts. She was consistent in her evidence that the first oral sex occurred either the day of or the day after Conservation Area Z. The oral sex occurred at her suggestion while they were engaged in kissing and fondling on his couch.

Dr. Brown testified that Ms A did come to the Monday, September 2011 office appointment. Prior to the appointment, there was some texting between Dr. Brown and Ms A. Dr. Brown testified that during the appointment, Ms A did not bring up "any new stressors or issues". Dr. Brown testified that there was confirmation to end the professional relationship and that it was Ms A's decision to do so. Ms A testified that she told him she thought she did not need psychotherapy anymore. She testified that she did so in order to be able to see him personally. She further testified that her anxiety was still bad at that time. Ms A testified that appointments at this time were just an excuse to see one another. She also testified that at that time, she did not want more appointments because they had already had sexual relations. She knew there were now things that she could not discuss with him. Dr. Brown testified that at the end of the Monday appointment, he did not intend to see Ms A again or have a personal or professional

relationship with her. The Monday appointment in September 2011 is noted to be from 14:40 to 15:28.

Dr. Brown agreed that following the Monday, September 2011 appointment with Ms A, he and Ms A texted. He testified that in response to a text message sent to him by Ms A, he invited Ms A to come over to his house on the evening of the Monday appointment in September 2011. He testified that Ms A came in the house and they sat down on the couch and talked for a while. He testified they then had sexual intercourse, after which Ms A went upstairs, had a shower and left. Dr. Brown denied that prior to sexual intercourse, there was any hugging, fondling, foreplay, kissing or touching. After Ms A left Dr. Brown's house, they texted one another.

On the next day, Tuesday, in September 2011, there was more texting. Dr. Brown testified that on this date, he again invited Ms A to come over to his house in the evening. Dr. Brown testified that when Ms A came over to the house, they sat on the couch. He testified that he told Ms A that "they couldn't do this anymore and that it wasn't 'OK'". Dr. Brown testified that after this discussion, Ms A performed oral sex on Dr. Brown and then left. Again, Dr. Brown denied that there was any kissing, hugging, hand holding, fondling or caressing of any kind prior to the oral sex.

On the next day, Wednesday, in September 2011, there was more texting and Dr. Brown testified that he asked Ms A to meet with him again. They met in Dr. Brown's car in a parking lot beside a Starbucks/Chapters. Dr. Brown testified that he told Ms A that they could not have any more contact and that sexual contact was "not OK" and they had to stop. Dr. Brown testified that Ms A became upset, cried, left his car and walked away. Dr. Brown then drove away. Dr. Brown testified that there was no more physical contact between them after that and that he never saw her again after that meeting.

Ms A indicated that their personal relationship ended sometime between the Monday appointment and the Friday of that week in September 2011. She testified that the first time Dr. Brown tried to end the relationship was in his car when he drove her to a

Starbucks to meet one of her professors about grad school. She testified that he said they could not have a personal or professional relationship. She testified that she got really upset, was crying and got out of the car to walk and clear her face before meeting with her professor.

Ms A testified later that day or the next day, Dr. Brown texted Ms A that he “could not imagine not having her in his life” and that they could figure something out to make it work. She said she felt really relieved. Ms A testified that subsequent to the text message, they had sex. Ms A testified that within a few hours after that sexual encounter, Dr. Brown texted Ms A and said that there would be no further personal or professional contact. Ms A testified that this made her feel “stupid”, “ashamed of herself” and “used”. She felt “lost” and in the end was left with nothing, “no him” (Dr. Brown), no boyfriend, “no counseling”, “no anything”.

On the Thursday in September 2011, there was further texting between Dr. Brown and Ms A. According to Dr. Brown, this texting was confirming what Dr. Brown had told Ms A on Wednesday in September 2011, that they could not have a relationship.

On the Friday of that week in September 2011, there were text message exchanges between Dr. Brown and Ms A. Dr. Brown could not recall the content of those messages.

On the Friday in September 2011, Ms A emailed Dr. Brown and requested that he refer her to another counselor covered by OHIP in the community. She specifically requested that it not be another counselor in his office. He responded that he could not do that because they did not have a professional relationship as “that ended in the previous week on the date of the Thursday appointment in September 2011”. Dr. Brown did offer to send Ms A a list of three counselors, who did not work at the Student Health Service, who were covered by OHIP and whom she could contact herself. Dr. Brown testified in cross examination that he could not refer her after the date of the Monday appointment in September 2011 as he was no longer her doctor. He also admitted that by the Friday of that week in September 2011, he had contacted a lawyer.

On the Wednesday of the next week in September 2011, Ms A sent an email to Dr. Brown. In that email, Ms A indicated that she did not realize how much their therapeutic relationship meant to her until it was gone. She added “you know more about me than anyone ever has and I’ve never trusted someone else so much in my life”. In the same email, Ms A requested that Dr. Brown take her back as a patient and writes “can’t we just work through all the last 3 weeks and have a better therapeutic relationship as a result.” She also says “You said we can’t have a personal relationship, and I can respect that, but you didn’t say a professional relationship was off the table.”

Dr. Brown responded the next day, Thursday, in September 2011. In his response, Dr. Brown confirmed that, in moving forward, they could not have a personal or professional relationship. He also reemphasized that if she needed further counseling that any of the counselors on the list that he had sent her would be excellent.

Ms A replied on the Thursday in September 2011. She wrote “you said you would not go anywhere as my therapist and you didn’t want me to feel rejected or abandoned”. Ms A explained that this statement reflected the conversation with Dr. Brown on a date in September, after he told her that he was in love with her.

On the next day, Friday, Dr. Brown replied to the Thursday email from Ms A for the last time and reiterated his position that the therapeutic relationship had ended.

Ms A arranged an appointment in October 2011 with her family doctor to request a referral to another counselor as she decided not to see any of the counselors on the list Dr. Brown provided. During that appointment, her doctor asked Ms A why she was not seeing Dr. Brown and asked what happened to which she replied that she had slept with him and he would not see her anymore. Subsequently, her family doctor indicated that she was required to make a mandatory report to the CPSO. Ms A felt upset and did not want anyone to know what happened and did not want to “ruin someone’s life”. Ms A

indicated to her family doctor that she did not want her name involved but eventually agreed to have her name reported to the College after she met with an investigator.

Credibility Assessment

The Committee recognizes the importance of credibility assessment in cases of alleged sexual abuse where conduct is carried out in private. The Committee understands that it may accept all of what a witness said, some of it or reject it entirely. The Committee is aware that there are a number of factors relevant to assessing credibility

In this particular case, the factors of particular importance to the Committee included:

- The probability or improbability of a witness' story? Did the evidence make sense? Was it reasonable? Was it probable? Was there a tendency to exaggerate?
- Did the witness have an interest in the outcome of the hearing that may influence his or her evidence?
- Did the evidence of another witness whom the Committee considered more worthy, contradict the witness' testimony?; and
- Has the witness given a prior inconsistent statement which affects his or her reliability?

The appearance and demeanour of the witness and the manner in which he or she testified were also considered by the Committee, but the Committee recognizes that demeanor evidence can be highly unreliable.

The Committee also accepts that when assessing the credibility of a witness, inconsistencies on minor 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 do not generally affect the credibility of the witness. When inconsistencies are on a material point about which an honest witness is unlikely to be mistaken, then that inconsistency may demonstrate carelessness with the truth. The Committee also appreciates that an

honest witness can still be mistaken and consequently, his or her evidence while sincerely given, may be unreliable.

Credibility Assessment of Ms A

The Committee found Ms A to be clear in giving her evidence at the hearing. She was forthright in admitting sensitive personal information about her family and her relationship with her boyfriend. She had insight into her past history of sexual abuse and understood that she needed help. She explained frankly why she sought help and how she came to be a patient of Dr. Brown. She was not overly emotional in giving her evidence. She did not appear vindictive. Indeed, had she not disclosed the sexual relationship to her family doctor, it is unlikely the matter would have come to light. She answered all questions posed and had no difficulty admitting when she was uncertain as to exact dates.

Her testimony at the hearing regarding her evolving personal and ultimately sexual relationship with Dr. Brown including when it began, that it included both sexual intercourse and oral sex and how it ended, was believable and persuasive. She was imprecise on dates but the Committee accepted her accounting of the sequence of events. Her testimony at the hearing with respect to the timing of events was not always consistent with her prior accounting of events, but for the reasons explained below, the Committee was satisfied that the evidence supports the findings that this Committee has made.

Counsel for Dr. Brown challenged the reliability of Ms A's evidence based on alleged inconsistencies between her evidence under oath at the hearing and what she told her family doctor, Dr. M, during her appointment in October 2011. The basis of the alleged inconsistency is in a letter written to the College dated October 2011 (exhibit 15) by Dr. M. The letter states "about a week after the yoga class, they had consensual intercourse."

In cross-examination at the hearing, Ms A agreed this is what she told Dr. M during the October 2011 appointment. She also agreed that she was asked to come back into the office and read the letter to confirm it was accurate before it was sent to the College, to

which she testified, “I confirmed that it held all the information I told her, yes.” It was also pointed out to Ms A that the College investigator, with whom Ms A spoke in January and March of 2012, made a note that she had reviewed Dr. M’s mandatory report with Ms A and Ms A believed at that time that the statement referred to above to be correct. However, at the hearing. Ms A did not agree that her “sexual relationship” with Dr. Brown started about a week after the Tuesday, September 2011 yoga class. She testified that she had sex with Dr. Brown either on the day she went to Conservation Area Z or the day after. She also stated in her testimony that she believes they had oral sex before they had sexual intercourse. She testified that when she made these statements to her family doctor and the investigator, she did not have her planner in front of her to be able to see dates. She stated, “So, four days, to me, is about a week.” She agreed she could not state with certainty that they had sex four days after the Tuesday, September 2011 yoga class.

It was also put to Ms A that when she was subsequently interviewed by the College in June 2014, less than a month before the hearing, the College investigator had made a note that “sex comes after no more office appointments. Had oral sex with him. Thinks it was before last appointment.” Ms A accepted that this note reflected what she had said during the June 2014 interview. She clarified however at the hearing that during that interview, she was fairly certain the oral sex was before the last office appointment. She admitted that she was still not positive about specific dates but she knows when sexual activity took place, or as she stated “where the sex lies”, in relation to when the appointments occurred and when they went hiking.

The Committee was not persuaded there were any material inconsistencies between the statements that Ms A made to Dr. M and the College staff and her testimony at the hearing. The focus of the conversation between Ms A and Dr. M was on the fact that she had a sexual relationship with Dr. Brown and now needed a referral. The focus was not on explaining what exactly had happened on specific dates. Ms A did not have her calendar with her. Ms A was attending her family doctor to obtain a referral to another therapist for the numerous stresses in her life which were significant and ongoing. The Committee accepted that the statement “about a week after the yoga class, they had

consensual intercourse” in Dr. M’s letter, was consistent with Ms A’s evidence at the hearing that she first had sexual relations, i.e., oral sex, with Dr. Brown either on the day of the hike to Conservation Area Z or the day after and sexual intercourse sometime thereafter. The yoga class was on the Tuesday in September. While four or five days is not a week, the Committee finds that Ms A was simply imprecise when she indicated to Dr. M that they had consensual intercourse “about a week” after the yoga class. Based on her evidence at the hearing, they had oral sex on either the day of the hike to Conservation Area Z or the day after and sexual intercourse sometime thereafter. Dr. Brown’s evidence is that they had sexual intercourse after the last office visit in September.

During cross-examination, it was also pointed out that during Ms A’s interview with the College investigator in January and March 2012, Ms A is reported to have said that the personal and sexual relationship with Dr. Brown started in the summer of 2011 while she was working at Hospital X. This work at Hospital X ended in August 2011. When questioned on this point, Ms A explained that at the interview, she was guessing, she recalled that it was warm outside and at the time, she did not consider the dates important to remember. The Committee accepted this explanation as reasonable. The first two weeks of September certainly could have felt like summer to Ms A. The fact that she had completed her work at Hospital X a week prior to the first September yoga class is not consequential.

It is also reported that Ms A told Ms N that she and Dr. Brown attended the same yoga classes in May or June 2011. Her evidence at the hearing, with the benefit of the yoga clinic attendance records, was that she began yoga classes in July 2011. The Committee finds that without the assistance of her yoga records, Ms A was simply incorrect when she met with Ms N in her recollection as to when she started her yoga classes.

Ms A also told Ms N in January 2012 that she and Dr. Brown “regularly” attended the Tuesday night and Friday noon yoga classes, whereas Ms A’s personal calendar and the yoga studio records confirm that she and Dr. Brown only attended four classes together

and one of those classes was inadvertent. One could argue as to whether or not four classes constituted a regular attendance together. The Committee, however, does not find that there was any intention to mislead as to when Ms A started to attend yoga or to the frequency in which she attended classes with Dr. Brown. Nor does the Committee find that Ms A was exaggerating or embellishing her account in her interview with Ms N or in her evidence before the Committee. Ms A was simply incorrect during the interview as to when she started attending yoga and one can debate whether four attendances constitutes a “regular” practice.

Finally, in cross-examination, it was pointed out to Ms A that Ms N reported in March 2012 that Ms A, with the assistance of her calendar, stated that intercourse occurred before the City 3 trip, which was in August 2011. Ms A agreed that this was quite a bit different from the evidence she provided at the hearing. Ms A also stated to Ms N that “the sex” occurred between two weddings she attended at the end of July 2011 and the beginning of September 2011, and she was not sure if she saw Dr. Brown between the date of the first yoga class on Tuesday and the Sunday in September 2011. These statements are clearly inconsistent with the timeline established at the hearing which was based primarily on the medical records (appointments in September 2011) and yoga records (three attendances with Dr. Brown in September 2011) and Dr. Brown’s evidence that the trip to Conservation Area Z was on the Saturday in September 2011. The Committee was puzzled by the fact that Ms A had previously reported that sex occurred before the City 3 wedding. The Committee understands that Ms A has struggled to pinpoint events to specific calendar dates, but would have expected her to recall events with respect to other significant markers at the time - such as an attendance at a wedding - which she purported to do when she was interviewed by Ms N. Ms A was not asked to provide any explanation as to why she previously thought “the sex” had occurred between the two weddings she attended or why she no longer held that view.

While Ms A made errors with respect to the timing of events in prior interviews, the Committee accepted that for the most part her focus at the time of these interviews was more on what happened to her as opposed to when precisely it happened. She is not good

with dates and it clearly took her some time, with the benefit of the records that are now available to her, to sort out when these events took place. In the Committee's view, these errors do not compromise her credibility. Her evidence was sincerely given and we find no evidence that she intended to mislead during any of her prior interviews or during the course of this hearing. It is also the Committee's view that Ms A's prior error with respect to believing that sexual relations with Dr. Brown occurred before the City 3 wedding does not impact the reliability of Ms A's evidence with respect to the sequencing of events related to the hike to Conservation Area Z (which Dr. Brown testified was on the Saturday in September 2011) and the start of sexual relations either that day or the day after, in particular her evidence that the two engaged in oral sex before the last office visit, which we know was on the Monday in September 2011. At the time Ms A made the statement about sex occurring before the City 3 wedding, she may have also believed the trip to Conservation Area Z occurred before the City 3 wedding. We do not know, however, because she was not asked this question. Ms A has never been certain as to when the trip to Conservation Area Z occurred. It is Dr. Brown who dated the outing to a Saturday in September 2011. Ms A was very clear in her evidence at the hearing that the two had already had sexual relations before her last office visit and that was the reason why she no longer wanted to see Dr. Brown in the office anymore. She testified, "it was before our last appointment, because by that time I'm, like, not wanting to see him in the office anymore and, like, I'm feeling, like, I don't need therapy anymore, like, I've already had sex with him. That is why I don't want to see him in the office anymore." She further testified that she felt she could no longer speak to him about the incident with her assailant or personal matters for which she needed therapy. As she stated, "That's a downer and I'm excited about this new positive thing that's happening with Peter. So, I didn't want to talk about sad things. I just wanted to focus on what was good. So, yes, I just wanted to see him personally." The Committee found this evidence to be very compelling and believed Ms A when she stated that the two had already had sexual relations before the last office visit.

Despite her difficulty with dates, the Committee accepts Ms A's evidence as credible and reliable with respect to development of the personal relationship and the timing of sexual

contact in relation to the trip to Conservation Area Z and the last office appointment on a Monday in September 2011.

Credibility Assessment of Dr. Brown

The Committee had concerns with Dr. Brown's evidence in a number of areas.

Throughout his testimony Dr. Brown minimized his personal involvement with Ms A particularly before the last office appointment in September 2011. There are a number of examples, two of which follow:

- (i) Dr. Brown denied that he ever held her hand, hugged or kissed her or touched her affectionately before the last office appointment in September 2011. They attended yoga together on dates in September after the unscheduled office appointment, they went to Starbucks, and they went for a hike to Conservation Area Z. All of this occurred after he had confessed his romantic feelings for her. All the while, they exchanged many text messages. Dr. Brown's evidence was that at that time, he was under the impression that the professional relationship was over. Under such circumstances, the Committee finds Dr. Brown's evidence that he had no physical contact with Ms A prior to the last office appointment in September implausible. Ms A's version of these events, which includes hugging, kissing, handholding during this time period is credible and much more likely.
- (ii) Dr. Brown testified that he never cooked dinner for Ms A or had her for dinner at his house. The Committee heard detailed evidence from Ms A about a dinner he made for her including some of the fridge contents. The Committee believed Ms A with respect to her account of this dinner. Again, Dr. Brown's denial is an attempt to minimize their relationship.

Throughout his testimony, Dr. Brown portrayed himself as taking a passive role. Ms A is described as doing the inviting whether for a walk or for tea at Starbucks. This also extends to their sexual encounters. The ultimate example of this is when he testified that

although he intended to end his relationship with Ms A in September when she came over to his home, the next thing he knew “the pants came off”, suggesting he did not know how he came to be undressed or played no role in initiating sexual activity on that occasion. This was interpreted by the Committee as a further example of attempting to avoid responsibility for his actions.

The Committee was troubled by Dr. Brown’s inconsistent and changing evidence.

Examples include the following:

- (i) Dr. Brown testified in examination in chief that prior to the Tuesday, September 2011 yoga class that there was no communication, text or otherwise, between him and Ms A that day when in fact the telephone logs indicated otherwise. He admitted that his testimony on this point was not correct.
- (ii) He stated repeatedly that he was unsure about what his professional obligations were surrounding boundary issues, yet he was insistent that he had no physical contact with Ms A prior to the termination of their professional relationship.
- (iii) He testified that it was his view following the unscheduled September 2011 office visit that the professional relationship had terminated, but insisted he had no physical contact with Ms A during the hike to Conservation Area Z two days later in September 2011. This was in stark contrast to the fact that he admitted having sexual intercourse with Ms A in September, only hours after their last office visit.
- (iv) He was inconsistent in his evidence as to when the doctor/patient relationship ended. Initially he insisted that it ended on the date of the unscheduled office appointment in September, but finally in cross-examination agreed that it continued until the date of the last office visit in September.
- (v) He stated that he had no intentions to pursue either a personal or professional relationship with Ms A following their last office appointment in September 2011,

but agreed that he texted with her shortly after this appointment and had sexual intercourse with her that evening.

The Committee also finds Dr. Brown's evidence as to the matters discussed during the September appointments to be implausible. Dr. Brown testified they did not discuss what was happening outside of the office between them and they did not talk about ending the professional relationship because of their personal relationship. Quite simply, given the circumstances, this is not believable. The Committee believes the personal relationship was front and centre for both of them and the reason for the first unscheduled September appointment was just as Ms A indicated. The Committee accepts Ms A's description to be credible and to reflect the truth of what was discussed during the September office visits.

It was also clear from his evidence that Dr. Brown was unsure of his obligations in respect to personalizing his relationship with Ms A. He described his feelings for Ms A [which he disclosed to her after the Tuesday September yoga class] as novel and surprising. It was hard for the Committee to conceive that a trained physician particularly a GP psychotherapist could be so woefully inadequate so as not to be aware of his growing attraction to his patient, her attraction to him and his obligations with respect to maintaining appropriate boundaries.

In addition to their disagreement as to when acts of a sexual nature took place, there were a number of other points where Dr. Brown's evidence and Ms A's evidence were in conflict. These include but are not limited to the following:

- Dr. Brown testified that he did not touch Ms A at yoga. Ms A testified that he assisted her in a foot position. The Committee believed Ms A. Dr. Brown had provided her with advice in the past with respect to her yoga practice and it was consistent with his past practice of providing advice that he would have continued in that vein by providing the assistance that Ms A describes during the class. This appeared to the

Committee to be another example of Dr. Brown attempting to minimize his personal interactions with Ms A;

- Dr. Brown testified that he never made her a meal. As noted earlier, the Committee does not accept his evidence on this point. Ms A's description was quite detailed, including a description of the conversation they had about having red sauce for his children;
- Dr. Brown testified that at the office visit of August 2011, he did not arrange to meet Ms A at yoga in September when she returned from City 3. Ms A testified that they arranged to meet at yoga and wrote the time down on a prescription which was entered as evidence. Ms A testified that as she was leaving for City 3 for a week she made the notation on the back of the prescription. She made the note to remind herself of the day and time that she and Dr. Brown agreed to meet for a yoga class at the Yoga Studio Y. Dr. Brown's explanation for this notation was that he was simply informing Ms A what day and time his favorite yoga instructor, Mr. B, held his classes and that they never arranged to attend the yoga class on the Tuesday in September 2011 together. The Committee accepts Ms A's version of events and rejects Dr. Brown's version which again minimizes his role. There is no mention of "Mr. B" on the note, simply the time and the day. Ms A's evidence is also consistent with the exchange of text messages confirming the attendance;
- Dr. Brown testified that Ms A did not come to his house before the date of the last office visit in September 2011. Ms A testified that they would hang out after yoga, and that she picked him up at his house for the Conservation Area Z hike, and they hugged in his driveway, and had oral sex either that day or the day after. The Committee finds that Ms A was at his house before the date of the last office visit in September and rejects Dr. Brown's position that she was not; and,
- Dr. Brown denied that the personal relationship that evolved after the Tuesday in September 2011 constituted "dating" and that there was never a "boyfriend"-

“girlfriend” relationship. Ms A describes an evolving personal relationship which involved the expressions of romantic feelings, yoga classes, walks and visits to Starbucks. Dr. Brown agreed they met for yoga, attended Starbucks, and went for a hike together all after he had expressed his romantic feelings for her. The Committee’s view is that whether or not Dr. Brown wanted to put a label on it, the two were engaged in a romantic relationship.

Finally, the Committee found Dr. Brown to be evasive in answering questions including rather straight forward questions that could be easily answered with a simple “yes” or “no. Examples include the following:

- (i) When questioned about the need for rapport in psychotherapy, he questioned the definition of rapport and indulged in circumlocution;
- (ii) When asked about recommending yoga to Ms A, he had difficulty responding directly as to whether he had or had not but eventually agreed he had recommended it to her.

Overall, the Committee had significant concerns about Dr. Brown’s credibility and did not find his evidence reliable.

ANALYSIS AND FINDINGS

The Committee is aware that the burden of proof in this matter rests with the College to prove the allegations. Further, the standard of proof is on the balance of probabilities. The allegations must be proven based on evidence which is clear, cogent and convincing.

Sexual Abuse

1. Did Dr. Brown and Ms A have a concurrent sexual and doctor patient relationship?

2. If so, what was the nature and extent of the sexual relationship, and in particular did the sexual relationship include oral sex and/or sexual intercourse?

The College alleges that Dr. Brown engaged in activity of a sexual nature with Ms A and that this included acts occurring prior to the specific evening of the date of the last office visit in September 2011.

Dr. Brown admits that he engaged in activity of a sexual nature with Ms A on the evening of the last office visit and the next evening in September 2011. He denies that he engaged in any activity of a sexual nature prior to the evening of the last office visit in September 2011. Dr. Brown takes the position that the sexual acts took place after the professional relationship ended.

Dr. Brown admits that he engaged in disgraceful, dishonourable or unprofessional conduct. He admits that having sexual relations with Ms A on the day of the last office visit and the next day in September 2011 supports such a finding. His counsel also conceded in her final submissions that meeting Ms A at Conservation Area Z, spending the afternoon with her, texting with her so many times, going for walks with Ms A and spending time with her in her car after yoga in September was “bad judgment” and they would not contest a finding of disgraceful, dishonourable or unprofessional conduct based on that behaviour.

The professional relationship

Nature of the Psychotherapy relationship

The Committee accepted that Ms A had significant ongoing stressors in her life. These included a pending court case related to sexual abuse by her assailant, a strained relationship with her boyfriend with whom she was living, concerns about school and other family problems. These stressors caused her significant anxiety.

Initially, she had a difficult time opening up to Dr. Brown. Trust was built slowly but by December 2010, she was willing to talk and share more. She called him Peter. She had his personal email. By April 2011, their discussions had become more familiar in that he shared personal information with her including significant facts about his marital status and his children.

By the spring of 2011, she had developed significant trust in him and began experiencing different feelings in that she had become attracted to him and cared what he thought about her. She had some insight into her feelings for him as she had some knowledge of transference and was aware that transference can arise in counseling situations.

Dr. Brown recommended yoga to her as part of therapy but went on to disclose his personal experience and details about where he went. This subsequently went on to become a regular feature in their relationship resulting in attending classes together.

They shared music interests and she gave him a “gift of music” in the summer of 2011. He responded by email and included a message on the jump drive which he gave back to her. This made her feel special.

The professional relationship now had a significant personal aspect as illustrated by late night emails sent by Dr. Brown to Ms A about matters of little consequence. In the context of a psychotherapeutic relationship, these developments were inappropriate.

Ms A’s degree of trust and affection for Dr. Brown continued to grow to the extent she was having sexual dreams about Dr. Brown. Their mutual interest in yoga featured in meetings outside the office which she encouraged.

The nature of the professional relationship changed suddenly on a Tuesday in September 2011, when after a yoga session they attended together, he sat in her car and professed that he had feelings for her. His disclosure changed the nature of the professional relationship suddenly and irrevocably. The next day, there were numerous text messages

between Ms A and Dr. Brown. He arranged to see Ms A in the office for a session on Thursday in September 2011.

The Committee finds that the conflict resulting from introducing not only a personal, but a romantic element, was a concern to both Ms A and to Dr. Brown, and this must have been reflected in their messages and must have been an integral part of the discussion at the Thursday office visit in September 2011.

At the time of the Thursday, September 2011 visit, Dr. Brown testified that he was unsure about whether he could continue to act as her therapist. There was no evidence before the Committee that he sought help or advice in dealing with this issue. Ms A was initially confused and concerned that she could no longer see Dr. Brown as a therapist, but valued her personal and romantic interest in Dr. Brown more than her need for psychotherapy. Dr. Brown initially testified that he believed the professional relationship with Ms A was terminated at the conclusion of the Thursday office visit.

Dr. Brown saw Ms A once more in the office on the following Monday in September 2011. Dr. Brown takes the position that the professional relationship truly ends on that date. He made a note that she had decided that she does not need to return for counseling. He indicates in his note of that day that she is doing better even though he is fully aware that not only the stressors in her life remain, they have increased due to the broadening in their relationship which now has a romantic element.

The Committee accepts that the Monday, September 2011 appointment is the last day that Dr. Brown saw Ms A in his office setting. The Committee does not accept that this constitutes the end of the professional relationship. Our reasoning is set out below.

Historical principles

The doctor patient relationship is guided by the values and principles of the profession. In rendering professional care, the role of the physician goes beyond service to a patient and embodies compassion, integrity and trustworthiness. As far back as Hippocrates, the

concept of “do no harm” has been accepted. In accepting public trust and confidence, the physician undertakes to act in the best interests of his patient with the utmost care and goodwill. While the practice of medicine is continually evolving, these principles apply as much today as in the past.

Regardless of the nature of practice, these fundamental principles apply. It is the expectation of the public that the medical profession will be committed to the public good and act in the best interest of their patients and that individual physicians will demonstrate this through their behaviour in their individual practice setting.

The doctor patient relationship is characterized by an imbalance of power in favour of the physician. The physician is in the controlling position. The patient is often in a very vulnerable position and must never be exploited for personal gain.

Physicians need to have respect for their patients. This includes that physicians must not initiate or respond to sexual advances. Permitting a relationship to become sexualized is a breach of trust and subjects the patient to harm.

Modern Medical Practice

Medical practice encompasses a broad spectrum of practice patterns. The type of practice will vary with specialty, focus and length of therapy. The reality of today’s medical world is that a number of patients seek care through emergency departments when acute situations arise or utilize walk-in clinics. Patients may not see the same physician on each visit and the interaction is limited sometimes to a single episode. Nonetheless, a large proportion of the work of most physicians involves committed care and long term management of chronic disease. While patients may come to depend on the relationship in these circumstances, it usually does not involve emotional dependency so much as it reflects appropriate management of common disease.

Psychotherapy practice is unique particularly in regard to the depth and nature of the dependency and the degree of trust involved. This may include frequent visits, disclosure

of highly personal or intimate information and protracted care. Emotional dependence on the physician is significant. Risk of harm is substantial if boundary violations occur. Those choosing to practice psychotherapy are expected to understand the inherent risks of such therapy such as transference and countertransference and to be able to respond appropriately.

Termination of the psychotherapy relationship

In general, the expectation is that termination of the physician/patient relationship will be clearly stated, understood and documented. Further, the patient will be truthfully informed of the reason for termination. It is also recognized once a decision is made, physicians need to commit to a course of action such that patients are not left in limbo and hold out unreasonable hope for continuing care when this is not possible. The Committee accepts these factors apply generally and to the termination of the psychotherapeutic relationship between Ms A and Dr. Brown.

The Committee finds that the date of the last office visit on Monday in September 2011, is the date following which Dr. Brown is no longer attending or actively treating Ms A. The Committee, however, does not accept that the date of the last office visit in September 2011, ended the professional relationship. It is clear that Ms A only agreed to terminate her counseling sessions with Dr. Brown because of the disclosure he made to her on the previous Tuesday in September. She was interested in pursuing a romantic relationship with Dr. Brown, and she believed such a relationship was possible. She testified she had discussed the CPSO policy with respect to a doctor/patient relationship with Dr. Brown. She knew it was not possible to continue with both a professional and romantic relationship with Dr. Brown. Ms A had become very dependent on Dr. Brown. Her only option given his disclosure to her was to agree to stop seeing him at his office. In the circumstances, her agreement to cease seeing him in session was hardly voluntary. Despite the fact Ms A was suffering from an anxiety disorder and had a fear of abandonment, he did not refer her to another doctor. Instead, he noted in her chart that she had been questioning for a number of months whether or not she needed counseling and he agreed that she did not need to continue with counseling. The Committee finds

this to be completely disingenuous given their personal circumstances (which are not referred to in the clinical notes) and the fact that all of her sources of anxiety remained - her long-time relationship with her boyfriend was coming to an end and she still had the pending criminal trial of her assailant hanging over her. Dr. Brown also provided her with a repeat of her anti-anxiety medication for a subsequent six months. It should have been obvious to Dr. Brown that Ms A remained in a very vulnerable position following the last office appointment in September, all the more so due to the situation he had created through his interactions with her. She was clear in her evidence that the reason she agreed to stop seeing Dr. Brown in session was because she wanted to pursue a personal relationship with him. The doctor-patient dynamic that had been created during an intense year of psychotherapy did not end with the last office appointment. Ms A was just as dependent on Dr. Brown.

That Ms A remained in a vulnerable position after the conclusion of the last September office visit is most clearly demonstrated in one of her emails in the following week of September 2011,

“I don’t know where to begin other than to ask if you’d be willing to take me back as a patient. I didn’t realize how much our therapeutic relationship meant to me until it was gone. I feel a wreck and like I lost the most supportive relationship I’ve ever had. You know more about me than anyone ever has and I’ve never trusted anyone so much in my life. Being your patient was and is important to me and I wish I had never left. Can’t we just work through all of the last 3 weeks and have a better therapeutic relationship as a result. Or at least try? I don’t know who to talk to and I don’t want to start with a new person. You said we can’t have a personal relationship, and I can respect that, but you did not say a professional relationship was off the table. I feel like I have nothing left to lose but to ask take me back?”

In general, it may be said the duration of the professional relationship will depend on the potential for the physician to exploit the trust or emotions of the patient or otherwise use the influence of their previous physician patient relationship. Simply put, in such circumstances, the physician patient relationship endures and the physician remains accountable, whether or not the service provided has ended.

Committee finds the professional relationship between Ms A and Dr. Brown endured beyond the last office visit of September 2011, and was still alive at time of the last communication between them.

The Personal/Sexual Relationship

Dr. Brown admits he had sexual intercourse with Ms A on the date of the last office visit and the next date in September 2011. Based on these facts, the Committee finds that Dr. Brown engaged in sexual intercourse with Ms A while she was his patient. As explained above, the fact that the office visits for psychotherapy ended on the date of the last office visit in September 2011, is of no moment.

The Committee also recognizes that sexual abuse captures words and touching of a sexual nature. The Committee heard conflicting evidence from Ms A and Dr. Brown about the extent of their sexual relationship prior to the second appointment date in September.

After a yoga class on a Tuesday in September 2011, Dr. Brown and Ms A walked to her car. They had a conversation while sitting in her car during which Dr. Brown said he had feelings for her. Ms A testified that he said he loved her. Regardless of what language was used, this resulted in an abrupt change in their relationship. The Committee accepts that his declaration was an expression of romantic feelings and sexual interest towards Ms A regardless of what language was used. The Committee is not of the view that any and all expressions of attraction or affection will necessarily constitute sexual abuse. Furthermore, remarks do not have to be explicitly sexual to be of a sexual nature. Whether or not the remarks are of a sexual nature will depend on the particular facts of the case. In this circumstance, the Committee finds that confessing one's feelings for a patient late at night while sitting with her in a car after just having attended a yoga class together is sufficient to conclude that the remarks were of a sexual nature in that an objective observer would have no doubt that Dr. Brown had conveyed to his patient through his remarks that he had a sexual interest in her. This was not an expression of platonic sentiments. As such, the Committee finds that Dr. Brown engaged in sexual abuse in September after yoga by making remarks of a sexual nature.

Dr. Brown and Ms A gave conflicting evidence about the extent of physical touching and when oral sex first occurred. Dr. Brown testified that there was no physical touching between the Tuesday, September yoga date and Ms A's last office appointment in September. He agreed that they were in contact by text messaging, they met at yoga, and went for a walk. He denied hugging or kissing Ms A. He agreed that on a Saturday in September 2011, he and Ms A went to Conservation Area Z spending the afternoon together. He said there was no sexual touching during this time.

Ms A testified that between the Tuesday, September yoga date and Ms A's last office appointment on the Monday in September, she and Dr. Brown went for walks in the neighbourhood, some late at night as her boyfriend would be working. She testified they held hands. She testified that they hugged in his driveway and that during their trip to Conservation Area Z he kissed her and she kissed him back. While in the car at Conservation Area Z, she said he touched her face and hair in an affectionate way. Ms A also testified that they first had oral sex either after they returned from Conservation Area Z or the next day. She said the oral sex was her idea as they were sitting on his couch and were kissing and fondling each other. Dr. Brown denied sexual touching before Ms A's last office visit and went so far as to say that even on the dates when he agreed sexual acts occurred, there was no foreplay involved.

The Committee accepted Ms A's version of event based both on the plausibility of these events occurring as she said they did and the Committee's own assessment of their respective credibility. The Committee accepted that Dr. Brown was of the view that on the day of the visit to Conservation Area Z, the professional relationship was over and it was more likely than not, given the intensity of the relationship and his confessed feelings for her, that he touched her affectionately during the hike to Conservation Area Z and engaged in oral sex either that day or the day after just as Ms A claimed he did.

The Committee therefore finds that Dr. Brown engaged in sexual abuse with Ms A both by touching her in a sexual manner and by engaging in oral sex with her prior to Ms A's last appointment in September 2011.

Disgraceful, Dishonourable or Unprofessional Conduct

Does the Committee find that the evidence supports a finding of disgraceful, dishonourable, or unprofessional conduct as admitted by Dr. Brown?

The Committee accepts Dr. Brown's admission to this allegation. His admission to having sexual intercourse with Ms A in September 2011, is sufficient to make a finding, even if the physician/patient relationship had terminated at the conclusion of the office appointment, which, as we have explained above, was not the case. The Committee finds, however, that his behaviour overall in allowing his relationship with Ms A to unfold as it did prior to having sexual intercourse with her on this last office visit is also sufficient to fully satisfy the allegation of disgraceful, dishonourable or unprofessional conduct. Further, after the last office visit, he failed to look to the welfare of his patient both in acts of omission and commission, seeking to wipe his hands clean.

In making this finding, the Committee had regard for the evidence accepted by the Committee which includes:

- Dr. Brown shared personal information with Ms A between January and April 2011. He told her he was not married anymore and his ex-wife's occupation and place of work. She learned that he had three children, and details about them. He told her what school they attended. He also told her he enjoyed painting and yoga. Her evidence was not challenged. Dr. Brown did not dispute that he shared details of his personal life. This is a clear boundary violation that Dr. Brown in his role of psychotherapist should have been alive to;
- Dr. Brown engaged in encouraging a personal relationship with Ms A by responding to her gift of music by sending her a return message on the jump drive she gave him, involving her in yoga, a sport he was involved in and providing her easy access to his personal email. He texted her late at night regarding the usefulness of certain yoga activities which was an inappropriate intrusion into her personal time. These actions

fostered a familiarity and personalization of the professional relationship and made her feel special;

- The Committee accepted Ms A's version of events leading to the Tuesday, September yoga visit that they mutually agreed to meet at when Ms A returned from City 3. The Committee found this to be a clear and significant boundary violation;
- Ms A testified that Dr. Brown encouraged her to keep a journal of her dreams and then he later asked her if he factored in her journal and if he would get to know what she wrote about him. During this period, Ms A indicated that visits were becoming more personal. The Committee accepted Ms A's evidence on these points and interpreted it as an example of the progressive and gradual change to a more personal relationship;
- After the Tuesday, September yoga appointment, Dr. Brown walked with Ms A, sat with her in her car and they had a conversation which led to his disclosure of feelings for her. It should have been amply evident to Dr. Brown at this time that it was not appropriate for him to be alone with her in her car on a dark and rainy night having a personal conversation. He had a duty to his patient and to the profession to put a halt to this and he did not;
- Regardless of what language Dr. Brown used to express his apparent sudden feelings for Ms A and whether the word love was used, the result was that the relationship immediately changed. The Committee accepted that, semantics aside, the relationship was now influenced by a romantic and sexual interest which was mutual. It was Dr. Brown alone who instigated this change;
- After the final September office visit, Dr. Brown had the opportunity to act in his patient's interest and he did not. Not only did he invite her to his house where they engaged in sexual intercourse, but he later informed her that their relationship must end only to recant; and

- Dr. Brown deluded himself into thinking that her emotional problems were lessening in the face of obvious stressors. He failed to recognize her urgent need to see another therapist and ignored the welfare of his patient.

The inappropriate behaviour and numerous boundary violations as noted above clearly support a finding of disgraceful, dishonourable or unprofessional conduct outside the finding of sexual abuse.

SUMMARY OF THE FINDINGS

The Committee finds the allegation of sexual abuse proven. The sexual misconduct includes oral sex and sexual intercourse, as well as touching and remarks of a sexual nature.

The Committee also finds Dr. Brown to have engaged in disgraceful, dishonourable or unprofessional conduct.

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

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Peter John Brown, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name of the patient in this matter or any information that could disclose the name or identity of the patient under subsection 47 (1) 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.

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 offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v.
Brown, 2015 ONCPSD 34**

**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. PETER JOHN BROWN

PANEL MEMBERS:

**DR. P. CHART (CHAIR)
D. DOHERTY
DR. E. STANTON
S. BERI
DR. P. TADROS**

Penalty Hearing Date: August 17, 2015
Penalty Decision Date: August 17, 2015
Release of Written Reasons: September 16, 2015

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

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 May 20, 2015. The Committee found that Dr. Brown committed an act of professional misconduct in that he engaged in the sexual abuse of a patient, and in that he 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 August 17, 2015, and delivered its penalty and costs order on that date, with written reasons to follow.

POSITION OF THE PARTIES

Counsel for the College and counsel for Dr. Brown made submissions on the issue of penalty. Dr. Brown was not present at the penalty hearing. The Committee was advised that Dr. Brown’s absence was due to health reasons.

The College sought a penalty consisting of: (i) revocation of the Dr. Brown’s certificate of registration, (ii) a reprimand, (iii) the posting of an irrevocable letter of credit or other security acceptable to the College, within thirty (30) days in the amount of \$16,060.00 for counselling; and (iii) costs in the amount of \$22,300.00, the tariff rate for a five day hearing.

Counsel for Dr. Brown did not oppose the order for revocation or a reprimand (which, as discussed below, are both mandatory), but argued that costs should only be awarded for four days of hearing and Dr. Brown should not be required to post security for counselling due to his financial circumstances.

PENALTY AND REASONS FOR PENALTY

The Code contains specific penalties for findings of sexual abuse. Subsection 51(5) states:

51(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. 1993, c. 37, s. 14 (3).

Nature of the Abuse

Ms A was a student at a university in Ontario. In September 2010, she became a patient of Dr. Brown. Dr. Brown worked at the Student Health Services at a university in Ontario and provided supportive psychotherapy to the university student population. Over the period of approximately one year, Ms A regularly attended appointments with Dr. Brown and received counselling for stressors in her life which included: a pending court case related to sexual abuse by her assailant, a strained relationship with her boyfriend with whom she was living, concerns about school, and other family problems. During this period, Dr. Brown shared very personal information with Ms A. By April 2011, Ms A had developed romantic feelings for Dr. Brown but did not share those feelings with Dr. Brown at the time.

In September 2011, the physician–patient relationship dramatically changed when Dr. Brown declared that he had “feelings” for Ms A, which in the Committee’s view was an expression of romantic feelings and sexual interest towards Ms A. Over the subsequent days, Ms A and Dr. Brown went on walks together, held hands and kissed. They would text each other regularly and attend yoga classes together, which were sometimes followed by lunch or brunch.

On or about a Saturday or Sunday in September 2011, Ms A and Dr. Brown first had oral sex. Dr. Brown also engaged in activity of a sexual nature with Ms A on the evening of the following Monday in 2011, shortly after Ms A's last office visit with Dr. Brown that day. Ms A and Dr. Brown also engaged in sexual activity the following day.

Dr. Brown was an experienced psychotherapist. He would have been well aware of the potential for transference and countertransference of romantic feelings between a patient and their therapist. Nevertheless, while providing psychotherapy, Dr. Brown allowed himself to become not only sexually attracted to Ms A but also to become intimately involved with her. Ms A was a vulnerable patient and as such, Dr. Brown exploited her vulnerability for his own personal pleasure with a total disregard for her psychological, mental and/or emotional health. Ms A's vulnerability and the continued need for psychotherapy were made evident in emails from Ms A to Dr. Brown after their personal and professional relationship ended. On a Wednesday in September 2011, Ms A stated "you know more about me than anyone else ever has and I've never trusted someone else so much in my life". In the same email, Ms A asks "can't we just work through all the last 3 weeks and have a better therapeutic relationship as a result". Subsequently, in an email dated a Thursday in September 2011 to Dr. Brown, Ms A said "you (Dr. Brown) said you would not go anywhere as my therapist and you didn't want me to feel rejected or abandoned".

At the time that Dr. Brown became romantically involved with Ms A, her significant stressors, including the impending court case, had not been resolved. Despite becoming romantically involved with Ms A and subsequently ending their personal and professional relationship, Dr. Brown failed to recognize or ignored Ms A's urgent need and request to see another therapist. By making no effort to refer Ms A to another physician, Dr. Brown ignored the welfare of his patient.

During his testimony at the hearing of the allegations, Dr. Brown demonstrated little insight as to the inappropriateness of his actions. This was evident when Dr. Brown testified that he was unsure whether he could not continue to have a healthy psychotherapeutic relationship with Ms A, even after he had disclosed his feelings to her.

This reinforced the Committee's view that Dr. Brown demonstrated an appalling lack of understanding of his role and obligations as a physician. Dr. Brown also avoided taking responsibility for his actions and portrayed himself as taking a passive role in the romantic and sexual relationship.

Public confidence and trust in the medical profession is essential. Dr. Brown betrayed his patient's trust. Dr. Brown's behaviour is offensive and reflects poorly on the profession and every hardworking physician who strives to serve his or her patients in an honourable manner.

Dr. Brown has no previous discipline proceedings and there is no pattern of misconduct with other female patients. Sexual abuse of a patient, however, is not to be tolerated by the profession or society and the law appropriately requires revocation and a reprimand for such behaviour.

Revocation

Given the findings that have been made by this Panel, revocation of Dr. Brown's certificate of registration is mandatory. Dr. Brown's inappropriate behaviour, including sexual relations with a patient and numerous boundary violations, warrants a very severe penalty. Even if revocation were not mandatory under the Code, the Committee would have ordered that Dr. Brown's certificate of registration be revoked.

Reprimand

A reprimand in this case is mandatory. It is the expectation of this Committee that a member appear before it to receive a reprimand. Given Dr. Brown's health issues, however, the Panel had no realistic expectation that Dr. Brown would attend in the near future and therefore agreed to deliver the reprimand on the date of the penalty hearing despite Dr. Brown's physical absence.

Security for Counselling

Section 51 (2) of the Code provides that the Panel may make an order:

- 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.

Dr. Brown's counsel made submissions with respect to Dr. Brown's financial circumstances and sought relief from the requirement to post security. There was no evidence, however, before the Committee to support the submissions with respect to Dr. Brown's financial circumstances. In any event, given the policy considerations that underlie section 51(2) and the importance that counselling be available for the patient should she pursue that option, the Committee was not inclined to agree with Dr. Brown's position. The Committee ordered that Dr. Brown reimburse the College for funding provided under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, within thirty (30) days of this order in the amount of \$16,060.00.

Costs

The College sought costs in the amount of \$22,300.00 at the tariff rate for a five day hearing. Counsel for Dr. Brown submitted that the cost should be reduced to \$17,840.00 which would represent the tariff for four hearing days. The basis for this submission was that the fifth hearing day was added at the request of College counsel in order to prepare closing submissions. As the extra day was not caused by Dr. Brown, counsel indicated that Dr. Brown should not be responsible for costs associated with the fifth hearing day. The Committee agreed and ordered costs of the hearing in the amount of \$17,840.00, payable by Dr. Brown to the College within thirty days of this Order.

The Committee is of the view that the penalty in this case addresses the goals of specific and general deterrence, the denunciation of serious professional misconduct, and the protection of the public.

ORDER

On August 17, 2015, the Committee ordered and directed that:

1. the Registrar revoke Dr. Brown's certificate of registration effective immediately.
2. Dr. Brown appear before the panel to be reprimanded.
3. Dr. Brown 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 thirty (30) days of this order in the amount of \$16,060.00.
4. Dr. Brown pay costs to the College in the amount of \$17,840.00 within thirty (30) days of the date of this Order.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v.
Brown, 2015 ONCPSD 34**

**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
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pursuant to Section 26(1) of the **Health Professions Procedural Code**
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B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. PETER JOHN BROWN

PANEL MEMBERS:

**DR. P. CHART (CHAIR)
D. DOHERTY
DR. E. STANTON
S. BERI
DR. P. TADROS**

Penalty Hearing Date: August 17, 2015
Penalty Decision Date: August 17, 2015
Reprimand Date: August 17, 2015
Release of Written Reasons: September 16, 2015

PUBLICATION BAN

TEXT of PUBLIC REPRIMAND
Delivered August 17, 2015
in the case of the
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
and
DR. PETER JOHN BROWN

Dr. Brown, as a physician you have failed abysmally in your obligation to this patient. You knew how vulnerable she was. There is simply no excuse whatsoever for involving her in sexual activity. You either gave no thought to the propriety of the sexual relationship, or lacked the will to act in an appropriate manner.

Regardless, you demonstrated an appalling lack of understanding of your role and obligations. Your ignorance of the dynamics at play was very troubling to this Panel. As a psychotherapist you needed to take particular care in regards to boundaries, yet you actively promoted a sexualization of the relationship. You had full responsibility to control and set the boundaries of your interaction with your patient.

You indulged in gross impropriety, and in doing so sexually abused your patient and brought shame upon yourself. Such actions also reflect poorly on the profession and hardworking physicians who strive to serve patients in an honourable manner. Nothing short of separating you from the practice of medicine will suffice as just sanction. There is really nothing more to be said.