NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Javad Peirovy, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names of patients, or any information that could identify the patients referred to orally or in the exhibits filed at the hearing under subsection 45(3) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

This is also notice that the Discipline Committee ordered a ban on the publication of the name and any information that could disclose the identity of the witnesses whose testimony is in relation to allegations of misconduct of a sexual nature involving the witnesses, 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… 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. Peirovy, 2018 ONCPSD 6

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) f 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. JAVAD PEIROVY

PANEL MEMBERS:

DR. P. POLDRE (CHAIR)
MAJOR A. H. KHALIFA
DR. V. MOHR
MR. J. LANGS
DR. P. GARFINKEL

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MR. P. WARDLE
MS A. FIDLER

COUNSEL FOR DR. PEIROVY:

MR. D. PORTER
MR. J. KATZ
MR. D.E. WOOLLCOMBE WADSWORTH

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Date: August 21 to August 23, 2017
Decision Date: February 26, 2018
Release of Written Reasons: February 26, 2018

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the "Committee") of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on August 21 to August 23, 2017. At the conclusion of the hearing, the Committee reserved its decision on finding.

THE ALLEGATION

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

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

RESPONSE TO THE ALLEGATION

Dr. Peirovy denied the allegation in the Notice of Hearing.

BACKGROUND

Dr. Peirovy, a general practitioner, was working in a walk-in clinic in 2009, when a single woman in her twenties (Patient A) was seen because of a minor ailment. She was assessed by Dr. Peirovy in a brief interview involving history and cursory physical examination. During the examination, she partially lifted her shirt up while he palpated her abdomen but was otherwise fully clothed. The patient and Dr. Peirovy shared a cultural background and language. At the end of the medical appointment, he gave her his cell phone number. Two days later she called him, and over the ensuing two weeks, they telephoned each other often, before going on a date. They developed a one and a half year relationship that was characterized by mutual respect and consideration, though there were several breakups. The

relationship included holding hands, hugging, kissing and physical sexual touching, but no intercourse. The patient eventually broke off the relationship. At one point, Dr. Peirovy mentioned to her his concern regarding how they first met.

Several years later in 2013, a College investigator contacted Patient A. While she did not wish to pursue a complaint against Dr. Peirovy, she received a summons that required her to attend an interview with the College investigator. She does not have any concerns about how she was treated by him or the College.

The College alleges that Dr. Peirovy's conduct, firstly, by using his medical office to initiate a social relationship with a young female patient by giving her his personal cell phone number, and secondly, by engaging in a romantic intimate relationship with her shortly after termination of the doctor-patient relationship, constitutes disgraceful, dishonourable or unprofessional conduct.

THE ISSUES

This case raises two primary issues as follows:

1) Did Dr. Peirovy engage in conduct or an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, by giving Patient A his cell phone number at the end of his first clinical encounter with Patient A in his office?

2) Did Dr. Peirovy's relationship with Patient A, entered into shortly after the termination of their doctor-patient relationship, constitute conduct or acts relevant to the practice of medicine that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional?

There is a further issue. Dr. Peirovy filed a motion to stay the proceedings against him as an abuse of process by reason of alleged misconduct by the College investigators who

interviewed Patient A. The Committee must consider that motion and whether the conduct of the College investigators constitutes an abuse of process, and if so, whether the proceeding should be stayed.

LEGAL PRINCIPLES

Burden of Proof

The onus is on the College to prove the allegations, on a balance of probabilities. The College must establish that it is more likely than not that the alleged events occurred. There is no legal onus on Dr. Peirovy to prove his innocence or disprove the College's case. As stated in the case *of F. H. v. McDougall*, 2008 SCC 53, there is no sliding scale for the civil standard of proof. There is one standard of proof, and that is on the balance of probabilities, based on evidence that is clear, cogent, and convincing.

Disgraceful, Dishonourable or Unprofessional Conduct

Disgraceful, dishonorable or unprofessional conduct is not defined in the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*. It is the Committee's task to determine whether or not a member has engaged in conduct, which would reasonably be considered by members as disgraceful, dishonourable or unprofessional. Expert evidence is not required. The Committee is able to decide based on its knowledge of the values of the profession, whether the member has engaged in such misconduct.

The Committee reviewed Richard Steinecke, *A Complete Guide to the Regulated Health Professions Act* (Toronto: Canada Law Book, 2014, at 6:60.20), where the author states:

> Historically, statutes establishing regulators of professions did not define professional misconduct. A century ago, however, courts developed a working definition for discipline tribunals to use. The court-developed definition has continued as the catch-

> all provision for most Colleges and prohibits conduct that would reasonably be regarded as dishonourable, disgraceful or unprofessional. The catch-all definition is intended to capture any improper conduct that is not caught by the wording of the specific definitions of professional misconduct. The catch-all provision can even be used where a regulation or bylaw could have been made, it was not. It is quite broad in its scope. The catch-all provision is not intended to capture the legitimate exercise of professional discretion or mere errors of judgement. However, conduct need not be dishonest or immoral to fall within the definition. A serious or persistent disregard for one's professional obligations is sufficient.

THE EVIDENCE

The Committee heard the testimony of Patient A. Dr. Peirovy did not testify. Various exhibits were filed, including phone, email and OHIP records contained in an agreed book of documents. A schedule containing the evidence of Ms X from an earlier decision of the Discipline Committee dated July 17, 2015, was admitted as similar fact evidence (exhibit 8). The reasons of the Committee for that evidentiary decision are set out below in these Reasons.

Testimony of Patient A

At the time of the hearing, Patient A was in her thirties.

Patient A testified that in 2009, she visited a walk-in medical clinic on her way home from university. She was accompanied by a friend. Patient A testified that she had either a respiratory infection, or type of flu, and attended the clinic in the early evening. She stated that it is likely that she required a doctor's note excusing her from class.

After registration at the reception desk in the clinic, she met with Dr. Peirovy alone in an examination room. They had never met before. He took a brief history, and did a brief physical examination with her lying down on the examination table. He partially lifted her shirt, while he palpated her abdomen. She does not recall whether he used a stethoscope or

took her blood pressure. Similarly, she does not recall the medical advice he gave her, or whether he gave her a prescription for medication.

During the visit, Patient A realized Dr. Peirovy spoke the same language. They spoke English and their language during the visit. The visit lasted about five minutes. During this time, Dr. Peirovy gave her his cell phone number. She understood the purpose for this was “to date”. She was surprised and very excited as she was attracted to Dr. Peirovy. She did not give him her number. She stated, “I don’t usually do things like that”. It was noted that Patient A initially could not recall who gave whom the phone number. Her memory was refreshed by her seeing phone records, showing that she initiated the telephone exchange she had with Dr. Peirovy subsequent to the visit.

At the end of the visit, Patient A expected that she and Dr. Peirovy would date. Nothing was said about dating or ending the doctor-patient relationship during this visit. Patient A did not consider Dr. Peirovy her doctor after the visit.

Two days later, Patient A phoned Dr. Peirovy late in the afternoon and again in the early evening. She did not recall any detail about the first call, nor of the several more in the following days. The conversations were of a personal nature, getting to know one another, and covering a variety of topics.

Patient A has no recall of many of the issues discussed in the medical appointment of 2009. However, she stated that dating was never discussed in the appointment or during the first telephone conversation two days later. She is not sure who first indicated that they should actually date. She said that her purpose in making the call to Dr. Peirovy, however, was to talk so that they could get to know each other or to arrange a date.

The first date between Patient A and Dr. Peirovy was at a downtown Toronto restaurant. There was no physical contact on the first date. Sexual activity began only three or four months after they were dating and progressed gradually. There was holding hands, kissing, hugging and intimate touching. There was no sexual intercourse. Over the next year and a

half, Patient A said that she felt she was in an exclusive relationship with Dr. Peirovy, although there were several breakups. She said she felt well respected at all times. She did not feel vulnerable and said that she felt she was in control. She broke the relationship off when she felt he was not the person she wanted to marry.

Patient A testified that she was informed by Dr. Peirovy at some point in their relationship that he was concerned about how they first met, that is that it occurred during a medical encounter. He suggested he wanted her to sign a document because of his worry that the way they met was not right, was unethical. He did not follow through with this.

When first contacted by the College in 2013, Patient A did not want to become involved. She had no complaints regarding how Dr. Peirovy had treated her. She did attend an interview with a College investigator, Mr. Gary Hickey, in response to a summons. When informed that she was required to attend, she called Dr. Peirovy who offered her advice and covered the costs of an independent lawyer for her. That lawyer attended the interview with Patient A in June 2014. One year later, Patient A attended a second interview. Patient A testified that prior to this meeting, she was informed by the College investigator that a lawyer was not needed as she was not under investigation, and she attended the interview on her own volition.

Phone Records

Patient A testified that she initially could not recall who gave whom the telephone number. The phone records indicated that she initiated the call, which establishes that Dr. Peirovy must have given her his number. Patient A made 17 calls to Dr. Peirovy in the first two weeks after the medical appointment. A number of telephone conversations were brief – just leaving a message; others were four or five minutes long and up to 17 minutes duration. In the week after the medical appointment, Dr. Peirovy called her seven times. They talked about “pretty much everything” – personal background, interests, professional goals, and they told each other jokes. Patient A testified that she felt the purpose of the calls was to get to know each other before they dated.

MOTION TO ADMIT SIMILAR FACT EVIDENCE

Counsel for the College made an application to the Committee to admit the evidence of Ms X, a witness in an earlier College discipline proceeding against Dr. Peirovy (*CPSO v. Peirovy* (2015)). The evidence included the following.

Ms X, a single woman in her twenties, was seen as a patient in March 2010 by Dr. Peirovy on one occasion in a clinic. The clinical encounter involved Dr. Peirovy taking a brief history and then conducting an examination of her chest after she had removed her shirt and bra. At the conclusion of the examination, Dr. Peirovy ordered an echocardiogram and engaged her in conversation about the neighborhood in which she lived. He then asked her out on a date. Ms X felt that Dr. Peirovy's intentions were clear - to initiate some sort of social contact with her in the future. He did explain that if he were to see her socially, he could not be her doctor. He asked her to sign a note on her chart terminating the doctor-patient relationship. She did sign such a document, wanting to conclude the appointment, and left as quickly as possible. However, Dr. Peirovy did not call her and she did not have further contact with him. Ms X later complained to the College about Dr. Peirovy.

The Law and Legal Principles: Similar Fact Evidence

Counsel for the College and counsel for Dr. Peirovy agreed on the general principles regarding the admission of similar fact evidence, that is, such evidence is generally not admissible because it tends to prejudice the trier of fact, but can be admissible if the probative value of the evidence outweighs its prejudicial effects.

The Supreme Court of Canada has ruled on this issue. Justice Binnie stated in *R. v. Handy*, 2002 SCC 56, that there is a "dangerous potential" that similar fact evidence "may capture the attention of the trier of fact to an unwarranted degree. It has potential for prejudice, distraction, and time consumption, and these disadvantages will almost always outweigh probative value" (see *R v. Handy* (2002), at para 37). Of importance, in *R v. Arp*, [1998] 3 SCR 339, the Supreme Court of Canada referred to Justice Sopinka's reasoning in *R. v. D.*

(L.E.), [1989] 2 S.C.R. 111, outlining the potential dangers associated with admitting evidence of earlier acts: the trier of fact may find the accused person to be "bad" and therefore likely guilty; it is also possible that the trier of fact may punish the accused for past misconduct for which he is already paid a penalty; or the trier of fact may become preoccupied away from the main purpose of the deliberations and substitute the verdict on another matter for the verdict on the charge being tried (see *R v. Arp* (1998) at para 40).

The law is clear that the onus is on the College to satisfy the Committee on the balance of probabilities that the probative value of the proposed similar fact evidence the College is seeking to admit in relation to a particular issue outweighs its potential prejudicial effect.

In order to determine whether to admit similar fact evidence, certain criteria must be considered.

Step 1*: *Cogency of the Evidence in relation to the Inferences Sought to be Drawn

Is the prosecution able to identify a specific issue in question to which this evidence is relevant? It must be defined with specificity. The trier of fact needs to determine the cogency of the proposed similar fact evidence in relation to that particular question (see *R. v. Handy* (2002)). Probative value cannot be assessed in the abstract. The utility of the evidence lies precisely in its ability to advance or refute a live issue pending before the trier of fact.

In assessing the probative value of the evidence, the Supreme Court of Canada has identified a number of factors known as connecting factors. These include the extent to which the other acts are similar in detail, proximity in time, circumstances surrounding or related to the similar acts, number of occurrences, any distinctive features, and intervening events or any other factors that would tend to support the underlying unity of the similar acts (see *R v. Handy* (2002), at para 82). Highly connected incidents have a high probative value. Generic or vague similarities are not sufficient for similar fact evidence to be admitted. They also increase the risk that an improper inference from "bad personhood" will be drawn.

Step 2*: *Assessment of Prejudice

Courts have found it necessary to assess both moral prejudice, i.e., the potential stigma of "bad personhood," and reasoning prejudice (including potential confusion and distraction of the jury from the actual charge against the respondent) (see *R v. Handy* (2002), at para 100). As to moral prejudice, it is frequently mentioned that "prejudice" in this context is not the risk of conviction. It is, more properly, the risk of an unfocused trial and a wrongful conviction (see *R v. Handy* (2002), at para 132).

Step 3*: *Balancing Probative Value with Prejudicial Effect

One of the difficulties, as Justice McHugh pointed out in *Pfennig v. R.* (1995), 127 A.L.R. 99 at p. 147, is the absence of a common basis for measurement: "The probative value of the evidence goes to proof of an issue, the prejudicial effect to the fairness of the trial." The two variables do not operate on the same plane. Probative value and prejudice pull in opposite directions on the admissibility issue and their conflicting demands must be resolved (see *R v. Handy* (2002), at paras 148, 149).

Analysis

Step 1: *Is the College able to identify a specific issue in question for which this evidence is being required?*

The utility of similar fact evidence lies precisely in its ability to advance or refute a live issue pending before the trier of fact. The live issue in this circumstance is: Does Dr. Peirovy use his medical encounter with a new female patient as a means of meeting and engaging the patient for social, sexual or romantic purposes?

In the case of Ms X, Dr. Peirovy asked her out on a date. In the case of Patient A, following a brief examination and conversation discussing the medical issues, Dr. Peirovy provided her with his cell phone number. She was excited and understood that this was for the purpose of

dating.

To be admitted, similar fact evidence has to be "reasonably capable of belief" (see: *R. v. Handy* (2002)). The College is seeking to admit the factual findings of the Discipline Committee in the previous discipline hearing regarding Dr. Peirovy, to support the evidence that Patient A gave at the hearing. The findings of the Discipline Committee regarding Ms X were not challenged by Dr. Peirovy and are certainly capable of belief.

A second issue regarding the strength of similar fact evidence relates to the possibility of collusion. In this case, there is no suggestion that Patient A and Ms X colluded with each other, nor is there any evidence of motive to collude.

In assessing the probative value of the evidence, the Committee reviewed the connecting factors identified by the Supreme Court of Canada - highly connected incidents have a high probative value (see *R v. Handy* (2002) at para 82).

Generic or vague similarities are not sufficient for similar fact evidence to be admitted. They increase the risk that an improper inference of bad personhood will be drawn. The Committee found there were several generic similarities; two young women, attending a walk-in clinic. Both were seen on only one occasion. The Committee afforded little weight to this evidence. Similarly, the proximity in time (one year apart) between the two events was not considered significant.

As to distinctive features, the Committee noted that in both circumstances Dr. Peirovy was alone with each of the two patients when he examined them; there was no nurse or other chaperone. In both circumstances, he initiated a social/relational connection – in the case of Ms X, by asking her on a date and in the case of Patient A, by giving her his cell phone number.

As to intervening events, the Committee noted that at the end of the interview with Ms X, Dr. Peirovy, when he asked her out, asked her to sign a note terminating the doctor-patient

relationship. This did not occur on the first visit with Patient A; but at some point during their relationship he told her that he was concerned about the way they met and said that he wanted her to sign a document to protect himself.

Step 2: ***Assessing Potential Prejudice***

Moral Prejudice – The Committee acknowledged that knowledge of Ms X's case has a prejudicial effect and this goes to Dr. Peirovy's past behaviour. The Committee recognized that the prejudicial effect of this evidence must be weighed against the probative value of the evidence, for the reason why Dr. Peirovy gave to Patient A his personal cell phone number.

Reasoning Prejudice – Will the trier of fact be unduly distracted and influenced by the inclusion of the earlier case? Or will the trier of fact want to retry the earlier case? The Committee considered these factors and concluded not.

Step 3: ***Weigh the Probative Value against the Potential Prejudice***

As stated by the Supreme Court of Canada in *R v. Shearing*, 2002 SCC 58, the judge's task is not to add up the similarities and dissimilarities, and then like an accountant derive a net balance. Where to draw the balance is a matter of judgment.

In the weighing of probative value versus prejudice, Justice Binnie stated in *R v. Shearing* (2002), at para73):

> "a good deal of deference is inevitably paid to the view of the trial judge. This does not mean that the trial judge has the discretion to admit similar fact evidence whose prejudicial effect outweighs its probative value, but it does mean that the Court recognizes the trial judge's advantage of being able to assess on the spot dynamics of the trial…Absent error in principle the decision should rest where it was allocated, to the trial judge".

While no two cases are exactly the same, there are precedents for admitting similar fact evidence in similar circumstances. The Committee reviewed several cases where similar fact evidence was accepted. For example, in *R. v. Stewart*, [2004] B.C.J. No. 195, a physician was charged with indecent assault and sexual assault with respect to nine adult female patients over approximately 20 years. The Court upheld the decision to treat the evidence of one complainant as similar fact evidence against the others.

In *CPSO v. Smith* 2006, CanLII 7282 (ON SCDS), three complainants and two similar fact witnesses testified with respect to sexual abuse by Dr. Smith. It was alleged that Dr. Smith had, among other things, engaged in sexual intercourse and oral sex with two patients, asked one patient to remove her clothing to show him her figure, and asked one patient to lift her skirt to show him her panties. In admitting the similar fact evidence, the Committee also noted that it was "mindful of the potential impact of the media reports", but found that "[t]here was no evidence of actual 'collusion' or tailoring based on the media reports." The doctor appealed the finding of the Discipline Committee and alleged error in the admission of similar fact evidence. The Court found that the Discipline Committee was correct in its ruling and its application of the Supreme Court of Canada decision in *R v. Handy* (2002).

Deitel v. College of Physicians and Surgeons of Ontario, [1997] O.J. No. 1866 (Div.Ct.) represents another example. The Discipline Committee's decision to admit the evidence of various complainants (C.S. and D.M) as similar fact evidence as well as evidence of patients (witness SS and Patient X) who were not complainants in that proceeding was upheld by the Divisional Court. All of the victims were patients, emotionally vulnerable, and all of the activities occurred in the medical services environment. The Divisional Court found there was a commonality of relationship, context, circumstances and sexual activity.

In the *College of Physicians and Surgeons of Ontario v. Noriega*, 2014 ONCPSD 31, the Discipline Committee admitted as similar fact evidence the evidence of a witness in relation to allegations of sexual impropriety and sexual touching. The Committee concluded that the witness was reasonably capable of belief and admitted the evidence after examining issues of

connectedness, similarities and dissimilarities. The Divisional Court upheld the Discipline Committee's decision on appeal.

The live issue in the subject case is whether Dr. Peirovy used a medical appointment to initiate a social, sexual or romantic relationship with a patient. Ms X's evidence was of a brief first medical encounter, involving a young woman, with a slightly more intimate exam. In the case of Ms X, Dr. Peirovy directly asked her out in the office. He said to Ms X that he wanted her to sign a note documenting the ending of the doctor-patient relationship, indicating he understood there was an unprofessional element in his conduct. He was aware this could be an issue and tried to circumvent it.

At the disciplinary hearing in July 2015, the Discipline Committee concluded: "Dr. Peirovy appears to have been completely oblivious with respect to the real meaning of boundaries and physician/patient relationship. He acted in a way which suggests he viewed his patient as a legitimate future object of his social, romantic, and/or sexual interests. He appears to have had no real understanding of the power imbalance in the doctor/patient relationship or, if he did, his understanding did not deter him in this instance".

In deciding whether to exclude or admit the evidence of Ms X as similar fact evidence, the Committee found that the College had established strong probative value for the evidence in relation to the central issue in this case. The Committee accepted the evidence of Ms X as similar fact evidence based on the similarity of the live issue in the two instances and the rarity of physicians socially connecting with a patient in a clinical office. The Committee found that Dr. Peirovy's behaviour with Ms X supported his intention in giving his telephone number to Patient A. It makes it unlikely that Patient A mistook the nature of Dr. Peirovy's communication. The similar fact evidence of Ms X is not conclusive or determinative, but is admitted as another piece of evidence that the Committee accepts it may consider in this case.

Adverse Inference

Dr. Peirovy did not testify at the hearing. Counsel for the College submitted that an adverse

inference should be drawn from this, i.e. that there was no other explanation (other than to form a social or dating relationship) as to why Dr. Peirovy gave Patient A his cell phone number, while in the office at the end of the medical appointment.

In a hearing before the Discipline Committee, the member is not required to testify. However, the member does not enjoy a right to be silent as in a criminal case. The late Justice Sopinka noted in the Law of Evidence in Canada (3rd edition, para 6.449) that an adverse inference can be drawn in civil cases when:

> …in the absence of an explanation a party litigant does not testify or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist the party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or she has exclusive control and does not explain it away. Such failure amounts to an implied admission that the evidence of the absent witness would be contrary to the party's case or at least would not support it". (see *CPSO vs. Garcia* (2017))

As the Discipline Committee stated in *CPSO v. McIntyre* (2016), the onus is and always remains on the College to prove the allegations on a balance of probabilities, and based on clear, cogent and convincing evidence. That said, a physician subject to discipline does not enjoy a right to remain silent and, accordingly, when the physician does not testify, the Committee may draw an adverse inference where that is appropriate (see *CPSO v. Rathe* (2012), *CPSO v. Lambert* (2013), *CPSO v. Liberman* (2012), and *CPSO v. Golomb* (1976)). This does not involve any speculation by the Committee as to the content of the missing testimony, or any reliance upon the substance of that presumed testimony. It is simply a statement of the common sense proposition that if the College's evidence establishes *prima facie* proof of a fact, and the physician chooses not to testify to answer that evidence, it is open to the committee to draw an adverse inference from the failure to testify (see *CPSO v. Garcia* (2017)).

The Committee noted that a *prima facie* case is simply a case to be met, consisting of the presentation of evidence that, if accepted, could result in a finding of professional misconduct against the doctor.

The Committee considered whether a *prima facie* case had been established by the College, which is a prerequisite for an adverse inference to be drawn. In this instance, the Committee found that a *prima facie* case had been established against Dr. Peirovy in the evidence:

1. Patient A testified that she understood when Dr. Peirovy gave her his personal cell phone number that they would become socially involved and date. She was surprised and excited by him having done so.

2. Patient A testified that there was no other purpose for Dr. Peirovy giving her his personal telephone number.

3. Other circumstances after Patient A's medical appointment support the purpose of Dr. Peirovy giving Patient A his phone number. For example, a few days after the medical appointment, both parties engaged in telephone communications of a social nature leading to a first date two weeks later.

4. Similar fact evidence from Ms X, who was asked out on a date by Dr. Peirovy in March 2010, in the office at the end of an initial medical appointment.

The Committee concluded in this case that there was no professional reason for Dr. Peirovy to give his personal phone number to this patient. He did not testify as to any other explanation, and an adverse inference was drawn by the Committee.

DECISION AND REASONS FOR DECISION

Dishonourable, Disgraceful or Unprofessional Conduct

ISSUE 1: Did Dr. Peirovy engage in conduct or an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, by giving Patient A his cell phone number at the end of his first clinical encounter with Patient A in his office?

Credibility and Reliability of Patient A

The Committee understands the difference in assessing the "credibility" of a witness, and in assessing the "reliability" of evidence. The credibility of a witness speaks to the honesty and veracity of the witness. The reliability of evidence speaks to its accuracy. This distinction is critical and is addressed by Justice Doherty of the Court of Appeal of Ontario in *R v. Morrissey*, [1995] O.J. 639 (C.A.) at paragraph 33:

> Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable.

Credibility of Patient A

Although hesitant, Patient A was a cooperative witness on the stand at all times. During her testimony, Patient A appeared poised; she was soft spoken and described her medical appointment with Dr. Peirovy in a highly credible fashion – she believes hers to be an accurate version of events and the Committee concluded that she was a credible witness. Her testimony that Dr. Peirovy gave her his phone number and that there was no reason for this other than to initiate a social dating relationship, is supported by the evidence.

A valuable means of assessing the credibility of a witness is to examine the consistency between what the witness said in the witness box and what the witness has said on other occasions. Inconsistencies on minor matters or matters of detail are normal and are to be expected. They do not generally affect the credibility of the witness. But where inconsistency involves a material matter about which an honest witness is unlikely to be mistaken the inconsistency can demonstrate carelessness with the truth. The trier of fact is then placed in the dilemma of trying to decide whether or not it can rely upon the testimony of a witness who has demonstrated carelessness with the truth. The Committee found that Patient A's testimony was consistent in all important respects with the transcripts of her interviews with the College from 2014 and 2015.

Reliability of Patient A's Testimony

The Committee did not find that Patient A concocted details in her testimony at any time. She was straightforward and non-evasive. She was honest about not remembering many details. The Committee found this to be entirely reasonable, given the length of time that had passed. Patient A's testimony was corroborated by other evidence. There is no doubt a doctor-patient relationship existed – she registered at the clinic and Dr. Peirovy billed OHIP for the visit. The phone records establish that Dr. Peirovy gave her his phone number. The fact that Patient A called him first and often does not remove Dr. Peirovy from responsibility for initiating the relationship by giving her his phone number during a medical appointment. The duty of the physician is to maintain professional boundaries.

FINDING: ISSUE 1

Based on all the evidence, including Patient A's testimony, the phone records, the similar fact evidence of Ms X, and the adverse inference drawn from Dr. Peirovy not testifying at the hearing, the Committee found that Dr. Peirovy engaged in conduct relevant to practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, by giving Patient A his cell phone number at her medical appointment with him.

ISSUE 2: Does Dr. Peirovy's personal relationship with Patient A shortly after the termination of their doctor-patient relationship constitute conduct or acts relevant to the practice of medicine that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional?

The College published in December 2008 its policy statement "Maintaining Appropriate Boundaries and Preventing Sexual Abuse", just a few months before Patient A visited Dr. Peirovy. The policy outlines the factors that should be considered when determining the propriety of a sexual relationship between a physician and a former patient, including:

- the length and intensity of the former professional relationship;
- the nature of the patient's clinical problem;
- the type of clinical care provided by the physician;
- the extent to which the patient has confided personal or private information to the physician; and
- the vulnerability a patient has in the physician-patient relationship.

According to the policy, when the physician-patient relationship involves a significant component of psychoanalysis or psychotherapy, sexual involvement with the patient is likely inappropriate at any time after termination. However, if a physician saw a patient on one or two occasions to provide routine clinical care, it may not be inappropriate to have a sexual

relationship with the former patient within a short time following the end of the physician-patient relationship.

An analysis of the relevant factors indicate that it may not have been out of keeping with the policy for this couple to begin and maintain a relationship: the single clinical encounter was brief, lasting five minutes; it was for a mild illness; there is no evidence that the patient revealed deeply personal information; the physical examination was cursory and Patient A was clothed at all times; there was no cultural, religious or language barrier; and the visit involved no therapy of any kind. Patient A described herself to be in control of the relationship and maintained that she was not vulnerable, which the Committee accepted as reasonable in the circumstances of this case. While nothing was documented about ending the relationship, Patient A believed Dr. Peirovy was no longer her physician after she left the brief single appointment she had with him in the walk-in clinic, and she never turned to him again for medical services.

There are no previous cases that have come before the College that are identical to the current case, but some cases share some similarities. *CPSO v. BCD* (2014) involved a physician who saw a woman in an ongoing professional relationship over at least seven years. Among other things, he treated her for a sexually transmitted disease and for depression. The doctor documented the termination of the doctor-patient relationship in June 2010. That same day, the patient and the doctor went out for coffee at her invitation, exchanged email addresses and personal phone numbers during the coffee date, and communicated consistently over the next few weeks. Some sexual activities, short of sexual intercourse, began two months after their final medical appointment; and sexual intercourse five months after the final medical appointment. In that case, the Committee found the patient was an independent, capable, and motivated woman, who was not vulnerable or taken advantage of by the member. The Committee concluded that the College did not prove that doctor BCD engaged in disgraceful, dishonourable, or unprofessional conduct. The relationship evolved slowly and over a reasonable period of time.

By contrast, *CPSO v. Horri* (2016) involved a physician who developed a relationship with a young woman he had seen professionally 12 times. She was a vulnerable and lonely woman with depression and Dr. Horri provided support for ongoing familial and relational challenges. At the final appointment, the patient dropped off a "thank you" note. Dr. Horri called her to thank her for the card and offered his ongoing friendship. Dr. Horri pursued a sexual relationship with this patient within two weeks of terminating the professional relationship. The patient was very vulnerable with depression, suicidal tendencies, and anxiety. She had little support from family and friends. Because of the boundary violation, she no longer trusted medical professionals. She had received sessions of support therapy, lasting approximately 35 to 45 minutes with Dr. Horri. She had developed a strong level of trust with him and confided much personal information. The Committee determined that revocation of Dr. Horri's certificate of registration was necessary given the degree of exploitation of and harm to a vulnerable young woman.

In *CPSO v. Redhead* (2013), an emergency room doctor saw a patient in November and December 2006. Several months later, a sexual relationship developed with Dr. Redhead claiming he did not recognize this person as his patient. He received a five-month suspension of his certificate of registration.

In *CPSO v. Kirsh* (2008), the doctor developed strong feelings for a woman in his community. In 2007, he met with this patient and her husband regarding their marital difficulties. After the meeting, he decided to speak to the patient about his feelings for her. Dr. Kirsh apologized to the affected individuals for his error in judgment (see *Kirsh* decision, page 6). His penalty included a public reprimand and the requirement to complete the course in understanding boundaries.

FINDING: ISSUE 2

Based on the evidence, including Patient A's testimony, a review of the Policy of the College that applied in 2009 and a review of other cases involving a sexual relationship developing after the termination of the doctor-patient relationship, the Committee found for the reasons

stated above that the conduct of Dr. Peirovy after the termination of the doctor-patient relationship, would not be reasonably regarded by members as disgraceful, dishonourable, or unprofessional.

COMMENT

The concept of boundaries in medical practice is rooted in the nature of the relationship between physician and patient. Boundaries are the parameters that describe the limits of a fiduciary relationship, in which one person entrusts his or her welfare to another. This contractual agreement contains for physicians an ethic of care and a tradition of comfort and healing which cannot be attained without the provision of a secure framework that delineates the purpose and meaning of the relationship and a set of expectations necessary for comprehending the experience. The parameters of the doctor-patient relationship are at the core of the capacity to treat.

ABUSE OF PROCESS: MOTION TO STAY PROCEEDINGS

The Law and Legal Principles: Motion to Stay Proceedings for Abuse of Process

A stay of proceedings is the most dramatic remedy a court can order (see *R v. Regan*, 2002 SCC 12, at para 53). It permanently halts the prosecution of an accused in a criminal case. In doing so, the truth seeking function of the trial is frustrated and the public is deprived of the opportunity to see justice done on the merits. In many cases, alleged victims of crime are deprived of their day in court.

Nonetheless, the Supreme Court of Canada has recognized that there are rare occasions – "the clearest of cases" – when a stay of proceedings for an abuse of process is warranted (see *R v. O'Connor*, [1995] 4 SCR 411 (SCC), at para 68). These cases generally fall into two categories: 1) where state conduct compromises the fairness of an accused's trial (the "main" category); and 2) where state conduct creates no threat to trial fairness but risks undermining

the integrity of the judicial process (the “residual” category) (see *R v. O’Connor* (1995), at para 73).

The test used to determine whether a stay of proceedings is warranted is the same for both categories and consists of the following requirements (see *R v. Regan* (2002), at para 54):

1) There must be prejudice to the accused’s right to a fair trial, or the integrity of the justice system that will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome.

2) There must be no alternative remedy capable of addressing the prejudice.

Where, after considering these two requirements, there is still uncertainty over whether a stay is warranted, a third criterion is considered, which requires a balancing of the interests that would be served by the granting of a stay of proceedings against the interests that society has in having a final decision on the merits (see *R v. Regan* (2002), at para 57).

When the residual category is invoked at the first stage, the question is whether the state has engaged in conduct that is offensive to societal notions of fair play and decency and whether proceeding with the trial in the face of that conduct would be harmful to the integrity of the justice system. To put it in simpler terms, there are limits on the type of conduct society will tolerate in the prosecution of offences. At times, state conduct will be so troublesome that having a trial – even a fair one – will leave the impression that the justice system condones conduct that offends society’s sense of fair play and decency. This harms the integrity of the justice system. For a stay of proceedings to be appropriate in a case falling into the residual category, it must appear that the state misconduct is likely to continue in the future (see *Canada (Minister of Citizenship & Immigration) v. Tobiass*, [1997] 3 SCR 391 (SCC)).

At the second stage of the test, the question is whether any other remedy short of a stay is capable of addressing the prejudice. The balancing of interests that occurs takes on added significance when the residual category is invoked. The court has stated that the balancing

need only be undertaken where there is still uncertainty as to whether a stay is appropriate after the first two parts of the test have been completed (see *Canada (Minister of Citizenship & Immigration) v. Tobiass* (1997), at para 92).

Where prejudice to the integrity of the justice system is alleged, the court is asked to decide which of two options better protects the integrity of the system – staying the proceedings, or having a trial despite the impugned conduct. This inquiry necessarily demands balancing. The court must consider such things as the nature and seriousness of the impugned conduct, whether the conduct is isolated or reflects a systemic and ongoing problem, the circumstances of the accused, the charges he or she faces, and the interests of society in having the charges disposed of on the merits.

The onus is on the member to establish this is one of these "clearest of cases" where a stay of proceedings is required. This is a high hurdle. Only a gross or shocking abuse of process will warrant a stay (see *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44).

Analysis

Counsel for Dr. Peirovy argued that the abuse of process relates to the "residual category" and not the "main category". The main category relates to the fairness of the trial. The residual category is invoked when the state has engaged in conduct that is offensive to societal notions of fair play and decency and when proceeding with the trial, would then be harmful to the integrity of the justice system. Counsel for Dr. Peirovy broke these issues down into three categories in this case:

1. Did the College investigators improperly use leading questions? (i.e., "put words in her mouth")?
2. Was it improper not to have told the witness that she could have counsel on the second interview?
3. Were there improper disparagements of the witness's earlier counsel?

1. Leading questions

On reviewing the transcript, the Committee noted that Patient A was asked some leading questions. Such questions did not in any way permeate the interview, nor were they found to be excessive. The Committee noted that context is important when considering the questions asked. It appeared that the witness was not opening up to the College investigators for reasons that are unclear. It could be language, modesty, or other form of hesitancy. The Committee accepted there is no law against leading questions by investigators, and in the circumstances, it seemed reasonable. Furthermore, Patient A held up well and did not allow words to be put in her mouth.

2. The requirement for investigators to offer the witness a lawyer

The Committee understands that the presence of counsel at an interview is not a right. There is the right of a witness to counsel at the hearing. A review of the email exchange between the witness and the College investigator reveals that this was not an attempt to circumvent the process. It appears the investigator was trying to be reassuring when Patient A asked if she needed legal counsel. Given that this witness had had a lawyer in the past, it may have been appropriate to offer her an option of bringing one to the second interview, but this is not a legal requirement and the response to Patient A by the investigator was appropriate. Furthermore, Patient A had no complaints about the conduct of the College or the College investigators.

3. Disparaging comments regarding counsel

While it is true that the transcript of the second interview reveals a few instances where the investigator may have been insensitive, in the view of the Committee, this never reached a level of impropriety and certainly did not undermine the integrity of the justice process. This is not a case where abuse of process was established.

The Committee, on reviewing the evidence and on keeping in mind the heavy burden on the applicant and that a stay should only be granted in the clearest of cases, decided that a stay should not be granted, and dismissed the motion.

SUMMARY OF FINDINGS

Dr. Peirovy's conduct in giving Patient A his cell phone number in his office at the end of their first clinical encounter constitutes professional misconduct in the circumstances of this case. With regard to the second issue, the Committee finds that the allegation is not proven.

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

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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. JAVAD PEIROVY

PANEL MEMBERS:

DR. P. POLDRE (CHAIR)
MAJOR A. H. KHALIFA
DR. V. MOHR
MR. J. LANGS
DR. P. GARFINKEL

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. A. BLOCK
MS. E. GRAHAM

COUNSEL FOR DR. PEIROVY:

MR. D. PORTER
MR. J. KATZ

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Date:	**August 21, 2018 and September 18, 2018**
Decision Date:	**March 20, 2019**
Written Decision Date:	**March 20, 2019**

PUBLICATION BAN

PENALTY DECISION AND REASONS FOR DECISION

On February 26, 2018, the Discipline Committee found that Dr. Javad Peirovy committed an act of professional misconduct, in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonorable, or unprofessional.

On August 21 and September 18, 2018, the Discipline Committee heard evidence and submissions on penalty and costs. The Committee also received extensive written submissions and books of authorities filed on behalf of the parties. The Committee reserved its decision on penalty and costs.

THE FINDINGS

On February 26, 2018, the Committee found that Dr. Peirovy committed an act of professional misconduct during his work at a walk-in clinic in February 2009, five months after he had obtained a certificate of registration to practise medicine independently. He examined a patient, a 25-year-old single woman, for a minor ailment. He conducted a brief interview involving history and a cursory physical examination. At the end of the appointment, he gave her his cell phone number for which there was no medical justification and which she viewed as intended to pursue a social or romantic relationship. In providing his phone number to the patient in a medical setting, Dr. Peirovy committed a boundary violation.

The Committee was required to determine an appropriate penalty that was reasonable and fair, for the finding made of providing his patient with his personal cell phone number on February 9, 2009.

VOIR DIRE REGARDING JURISDICTION AND ADMISSIBILITY OF EVIDENCE

At the outset of the penalty hearing, College counsel proposed to call two witnesses - a patient of Dr. Peirovy's (Patient A) and a Case Compliance Manager of the College (Ms. Rachel

Rappaport-Beck). Counsel for Dr. Peirovy objected to these witnesses both on jurisdictional and on admissibility grounds. Following a *voir dire*, the Committee decided to exercise its discretion not to hear the proposed evidence of the two witnesses, for the reasons that follow.

Submissions of Dr. Peirovy

Counsel for Dr. Peirovy submitted that the witnesses would be called to testify about a new complaint not referred to in the Notice of Hearing – an alleged breach by Dr. Peirovy of a 2015 Discipline Committee Order, which was referred to but has not yet been disposed of by the College's Investigations, Complaints and Reports Committee (the "ICRC).

In that 2015 Order, the Discipline Committee ordered that Dr. Peirovy have a monitor present during all clinical encounters with female patients and have a note posted to this effect in his office. The matter of the alleged breach of the 2015 Order was before the ICRC at the time of this hearing, but had not yet been dealt with.

Counsel for Dr. Peirovy submitted that the witnesses would be testifying about the alleged breach prior to the ICRC's disposition of the allegation. Counsel for Dr. Peirovy submitted that the Committee did not have the jurisdiction to hear evidence from the two witnesses of the other alleged misconduct (i.e. seeing female patients without a chaperone present), which is the subject of ongoing consideration by the ICRC for a possible referral to a discipline hearing. Furthermore, counsel for Dr. Peirovy submitted that the evidence of these witnesses is inadmissible.

In support of his submission that the Committee lacked jurisdiction, counsel for Dr. Peirovy presented a case from the Ontario Court of Appeal (*Hryciuk v. Ontario*, 1996). In this case, the Court of Appeal quashed the finding that Justice Hryciuk should be removed from office because the inquiry judge heard and considered evidence of three new complaints that had not been screened or referred to her by the Judicial Council, as was required under the relevant statute.

In *Hryciuk*, the inquiry judge heard five complaints against Justice Hryciuk; two of the cases had passed through the Judicial Council, but three new complaints had not been screened by the Judicial Council. It was held that by hearing the three additional complaints, the inquiry judge had exceeded her jurisdiction. The inquiry judge had based her recommendation on all the complaints she heard, including the ones that she had no authority to hear. The evidence of those three complaints formed an integral part of the recommendation that Justice Hryciuk be removed. The ruling by the Court of Appeal reinforced the necessity of the two-stage process: the Judicial Council, meeting in private, performs a screening function. This is followed by the court hearing, a public process.

Counsel for Dr. Peirovy submitted that the jurisdiction of the Discipline Committee is limited to complaints that have been referred to it by the ICRC and are listed in the Notice of Hearing. Counsel for Dr. Peirovy also relied upon an earlier case of the Discipline Committee, *CPSO v Henderson* (2003). The ruling in *Henderson* endorses the principles that were set out in *Hryciuk*. In *Henderson* (2003), the College Registrar had amended the Notice of Hearing to include a second patient complaint that had not passed through the then Complaints Committee. Counsel for Dr. Peirovy submitted that College counsel had not provided to the Discipline Committee any legal authority to support her position that it is acceptable to bypass the two-step process that is provided for in the Health Professions Procedural Code ("the Code"), which is Schedule 2 to the *Regulated Health Professional Act, 1991* ("the RHPA").

Finally, with regard to hearing the testimony of the College Compliance Case Manager, counsel for Dr. Peirovy submitted that under section 42 of the Code, at least 10 days' notice must be given for a witness to be called. The College gave only four days' notice in this case.

Submissions of the College

Counsel for the College submitted that the purpose of tendering the new witnesses was not to invite an additional finding or impose a more severe penalty, nor was the purpose to use this information as an aggravating factor, or as similar fact evidence. Rather, counsel for the College wished to call these witnesses because the College's role is to protect the public.

Counsel for the College submitted that the information from these two potential witnesses could have a bearing on terms, conditions, and limitations on Dr. Peirovy's certificate of registration that she would be seeking, and therefore is relevant in determining an appropriate penalty that would ensure protection of the public. Counsel for the College submitted that in circumstances where a finding of professional misconduct has been made, other evidence relevant to the determination of the appropriate penalty is commonly considered. College counsel submitted that there is no statutory restriction regarding the type of evidence the Committee can consider in a penalty hearing. According to common law, all relevant evidence must be heard, except when there are specified exclusions.

Counsel for the College presented an Ontario Court of Appeal case (*Volochay vs. The College of Massage Therapists of Ontario* (2012)) in which there was a challenge to the appointment of investigators, in part based on jurisdictional grounds. The member sought to quash a Complaints Committee and subsequent Executive Committee decision to continue to investigate a complaint of sexual abuse, which the complainant subsequently withdrew. There was indication that the member had pressured the complainant to withdraw. In the circumstances, the Committee decided to continue the investigation and the College directed the investigator not to give notice of the complaint to the member. This lack of procedural fairness raised an issue of "true question of jurisdiction" on appeal; does the tribunal have the authority to make the inquiry in the first place? The Court of Appeal ruled that although the College had breached its duty of procedural fairness by failing to provide notice to the member, it was not a true question of jurisdiction. "Whether a tribunal breached its duty of fairness is not relevant to whether it had authority to begin its inquiry. A breach of the duty of fairness only arises after the inquiry has lawfully begun. Though a tribunal that breaches its duty of fairness may be said to have abused or exceeded its jurisdiction, this is not the same thing as having no jurisdiction to even start an inquiry" (See *Volochay* (2012) at para. 56). Although the Court was critical of the College's breach of its duty of fairness, it ruled in favour of the College and upheld the Committee decisions.

College counsel provided to the Committee a draft order to help it to determine the relevance of the proposed testimony to the penalty proposed by the College in this case. College counsel

reiterated the rule regarding admissibility of evidence: “Evidence cannot be entered unless it is relevant, but all evidence that is relevant is to be admitted, unless it is subject to an exclusionary rule”. College counsel also provided case law regarding the primary role of the regulatory body in protecting the public (*Minnes v. CPSO* (2015)).

College counsel acknowledged that there are current terms, conditions and limitations imposed on Dr. Peirovy’s certificate of registration dating back to a previous appearance before the Discipline Committee. However, she submitted that new terms, conditions and limitations proposed are required in order to ensure the maintenance of clinical boundaries and that patient encounters take place in a safe, protected environment. College counsel maintained that evidence of an alleged recent breach involving a new patient who was unaware of the need for a practice monitor is therefore relevant to the determination of the appropriate penalty in this case.

Analysis

The question that must be addressed with regard to the admissibility of the proposed evidence is whether it would have prejudicial effect that outweighs its probative value. Prejudicial effect refers to unfairness, misleading information, or involves an inordinate amount of time and resources (see *R v Corbett*, [1988] 1 SCR 670, at para 125).

In *Corbett* (1988), a criminal case which dealt with the constitutionality of evidence under the *Canada Evidence Act*, the question was whether knowledge of an earlier conviction for murder would prejudice a new murder trial. The Supreme Court of Canada ruled that evidence can be admitted for certain purposes, but not others. For example, an earlier murder is relevant to the defendant’s credibility but not to whether he had committed the second murder. The Supreme Court of Canada stated at para 36:

> …the best way to balance and alleviate these risks is to give the jury all the information, but at the same time give a clear direction as to the limited use they are to

> make of such information. Rules which put blinders over the eyes of the trier of fact should be avoided except as a last resort.

And at para 51:

> ….basic principles of the law of evidence embody an inclusionary policy, which would permit into evidence everything logically probative of some fact in issue… Thereafter the question is one of weight. The evidence may carry much weight, little weight or no weight at all; if an error is to be made it should be on the side of inclusion rather than exclusion.

The Committee also reviewed *R v Morris* (1983), a criminal case heard at the Supreme Court of Canada. It involved trafficking and importing heroin between Vancouver and Hong Kong. An article regarding heroin trafficking in Pakistan was found in the defendant's home and introduced as evidence. The Court ruled that even though its probative value was low, its prejudicial effect was not large enough to exclude it.

In *R v Handy* (2002), Justice Binnie of the Supreme Court of Canada provided a detailed analysis of the law regarding prejudicial effect, particularly in relation to similar fact evidence. Handy had been accused of a sexual offence involving an acquaintance – the sex had begun in a consensual fashion, but, during the encounter became forced. Handy's ex-wife was called to testify regarding her similar experiences during a seven-year abusive relationship with him. The Supreme Court of Canada ruled that her evidence was not admissible, because of the degree of prejudice that came with such evidence. The Court described two types of prejudice: moral prejudice (the potential stigma of "bad personhood") and reasoning prejudice (the potential confusion and distraction of the jury from the actual charge against the respondent). The general rule from *Handy* (2002) is that evidence of bad conduct outside the case is generally to be excluded. Unless the evidence is specific, cogent and relevant, its prejudicial effect outweighs its probative value.

The Committee considered the submissions of both counsel in light of the legal principles from the cases filed. Although not persuaded that the Committee lacks jurisdiction (i.e., the first argument), the Committee accepted the objection as to the admissibility of the proposed evidence (i.e., the second argument).

The fundamental principle is that relevant evidence generally should be admitted, unless there is an exclusionary rule. Evidence of "bad character" (i.e., a general propensity to behave poorly) should not be admitted, unless specific cogent similar fact evidence exists (which was not being argued in the subject case). Even where it is determined that the evidence is relevant, there must be a balancing of probative value versus prejudicial effect.

The Committee notes that in the current case, the ICRC has not yet made a determination with respect to Dr. Peirovy's alleged breach involving a new patient. An allegation of professional misconduct regarding this patient has not been referred to the Discipline Committee. As a matter of fairness, the physician must be able to defend himself against an allegation of professional misconduct. The prejudicial value of "distraction" is very high here. Also, the Committee was not presented with a single case precedent in which evidence from a case that has not yet been disposed of by the ICRC was admitted and considered by the Committee in determining an appropriate penalty.

The Committee made an order in the exercise of its discretion not to admit the evidence of the two witnesses that the College proposed to call in the penalty hearing.

SUBMISSIONS ON PENALTY AND COSTS

The Committee considered the written and oral submissions regarding penalty and costs from College counsel and counsel for Dr. Peirovy.

Submissions of the College

College counsel submitted that the appropriate penalty and costs order in this case should include the following:

1. a reprimand ;
2. a five-month suspension of Dr. Peirovy's certificate of registration;
3. imposition of terms conditions and limitations on Dr. Peirovy certificate of registration, including requirements that Dr. Peirovy:
    a. not engage in any professional encounters with any patients unless they take place in the continuous presence of a practice monitor;
    b. post a sign in all waiting, examination and consulting rooms of his practice notifying patients of the requirement that he must practice with a monitor;
    c. post a certified translation of the sign in all languages in which he practises;
    d. ensure that each patient with whom he has a clinical relationship is directly notified prior to the encounter of the details of the restriction that he practise with a monitor;
    e. provide a written note to each patient advising of his prior Discipline Committee appearance, including the order and decision and reasons, before providing treatment;
    f. have all patients sign a written notice to acknowledge that he/she has reviewed the earlier order and reasons;
    g. provide patients with a certified translation of the earlier order and reasons in any language in which he provides services.
4. pay hearing costs to the College, in the amount of $36,860.

Submissions of Dr. Peirovy

Counsel for Dr. Peirovy submitted that the appropriate order for the finding of professional misconduct in this case would be a reprimand and costs payable to the College, in the amount of $18,430.

PENALTY AND REASONS FOR PENALTY

The Committee reviewed the documents provided by counsel and considered the oral and written submissions made in relation to penalty and costs. In arriving at its decision, the Committee considered the specific facts and circumstances of the case as well as aggravating and mitigating factors and penalty principles. As well, similar cases were examined.

Penalty Principles

The Committee took into account a number of principles in determining what would be a fair and reasonable penalty in the circumstances of this case. Paramount is the protection of the public. It is also important to express the denunciation of the member's behaviour, and to maintain public confidence in the College's ability to regulate the profession in the public interest. Deterrence, both of the member and other physicians, is also important in determining the penalty. When possible, the penalty should provide for rehabilitation of the member. The penalty should also be proportionate to the misconduct finding.

Aggravating Factors

The major aggravating factor in this case relates to the nature of the misconduct. Dr. Peirovy's offering his phone number to his patient for personal reasons reflected a significant breach of the boundaries required in the doctor-patient relationship. It occurred in the medical office at the end of a clinical examination.

Boundary violations are regarded as extremely troubling. Boundaries are the parameters that describe the limits of the fiduciary relationship in which one person entrusts his or her welfare to another. The contractual agreement between a physician and patient includes for physicians an ethic of care and tradition of comfort and healing. This contractual agreement cannot be attained without the provision of a secure framework that delineates the purpose and meaning of the physician-patient relationship, and a set of corresponding expectations. The parameters of the physician-patient relationship are at the core of the capacity to treat.

Physicians have an ethical obligation not to exploit the trust, power imbalance and dependence that characterize the doctor-patient relationship. It must never be used for the physician's personal advantage. The duty of a physician is to act in the patient's best interest.

Dr. Peirovy's Previous History with the College

In 2015, Dr. Peirovy was found to have engaged in serious professional misconduct, in that he had sexually abused patients; had engaged in disgraceful, dishonourable and unprofessional conduct with one patient; and was found guilty of an offence relevant to his suitability to practise medicine after having been criminally convicted for assault in relation to two patients. The Discipline Committee findings in 2015 are related to events that took place in 2009 to 2010, which post-date the events that gave rise to the findings of professional misconduct in the current case.

The Committee recognizes that the finding of the Discipline Committee in 2015 in relation to subsequent conduct by Dr. Peirovy cannot be considered an aggravating factor in the present case. However, the courts have held that the fact that a person convicted of an offence has committed similar offences cannot be regarded as irrelevant to the sentencing process. Similarly, the fact that Dr. Peirovy was found to have committed acts of professional misconduct subsequent to the conduct in this case is not an aggravating factor, but cannot be regarded as irrelevant to the determination of an appropriate penalty.

In *CPSO v. Marshall* (2016), the Committee noted the following with respect to Dr. Marshall's previous criminal conviction:

> Because this conviction took place after the events in question at this hearing, it cannot be considered as an aggravating factor in the present case. However, it can be used in considering rehabilitation, specific deterrence, and protection of the public.

In *Finelli* (2008), the Ontario Superior Court recognized that a previous conviction can be taken into account to negate any mitigating circumstances and displace the presumption that the accused might be a good candidate for a rehabilitative sentence.

It is noteworthy to the Committee that Dr. Peirovy's misconduct toward the patient in the current case (i.e., using a medical encounter as a means of meeting and engaging the patient for social or romantic purposes), is similar to his conduct that was the subject of the previous discipline hearing in 2015. This is not an isolated occurrence. The Committee finds that Dr. Peirovy's 2015 discipline history with the College is relevant to the Committee's consideration of the protection of the public in assessing the proposed penalty.

Mitigating Factors

The Committee found that there were few mitigating factors in this case. Dr. Peirovy completed one workshop on boundaries (11.5 hours) in 2011. This was prior to the 2015 discipline hearing.

In 2018, the Ontario Court of Appeal upheld the penalty ordered by the Discipline Committee in 2015, and made specific mention of expert evidence from an educator who was working with Dr. Peirovy. The Court noted that this work "was relevant to the issues of remediation and risk management". According to the educator, Dr. Peirovy had deficits in interviewing skills, verbal communication, awareness of issues pertaining to patient consent, and sensitivity both as to how patients perceived him and how his behaviour affected his patients. She concluded that Dr. Peirovy was largely unaware of his professional responsibility to maintain boundaries, but opined that he had made good progress and she was prepared to continue to work with him. While the Committee noted the Ontario Court of Appeal's comments regarding this expert evidence, given Dr. Peirovy's lack of awareness of boundary issues, even with recent improvements, the Committee did not find this to be significantly mitigating in this case.

The Committee reviewed a letter written by Dr. Peirovy's treating psychiatrist. This physician has treated Dr. Peirovy on-and-off since March 2010. He described Dr. Peirovy's symptoms of anxiety and depression as relating to being charged with sexual assault of his patients. He had returned to treatment in May 2018. This was related to the recurrence of symptoms related to the stress of the penalty hearing. The Committee did not consider these symptoms or his current treatment to be a mitigating factor or having a bearing on what is an appropriate penalty in this case (see *CPSO v. Kunynetz*, 2018).

The Principles of Totality and Res Judicata

Counsel for Dr. Peirovy submitted that the principle of totality should apply in this instance. In the criminal law context, where consecutive sentences are imposed, totality refers to the recognition that the combined penalty should not be unduly long or harsh. In the discipline committee context, this is to avoid penalties that cumulatively are out of proportion to the gravity of the misconduct.

In *Matheson v. College of Physicians and Surgeons, Province of Prince Edward Island* (2010), the PEI Court of Appeal stated:

> The cumulative effect of those suspensions, combined with other sanctions, do not exceed the overall culpability of the offending professional.

In 2015, the Discipline Committee ordered a six-month suspension of Dr. Peirovy's certificate of registration. This was upheld by the Ontario Court of Appeal. Counsel for Dr. Peirovy submitted that any further period of suspension for the misconduct in combination with the six-month suspension previously imposed by the Discipline Committee would represent an excessive penalty. The Committee does not agree.

Counsel for Dr. Peirovy raised the concept of *res judicata* noting that when an issue has been adjudicated, it is binding and not subject to further adjudication. Counsel for Dr. Peirovy

referred to the case in *Martin v. Goldfarb and Farano* (2006), **44 BLR (2d) 158**, in which the Ontario Court of Appeal stated:

> It is in the public interest that there should be an end to litigation. …An issue once decided, should generally not be re-litigated to the benefit of the losing party and the harassment of the winner. A person should only be vexed once in the same cause…A litigant to use the vernacular is only entitled to one bite at the cherry.

Accordingly, the Committee found that the principle of *res judicata* does not apply in the circumstances of this case. The Committee noted that the current case before it involves a different patient and unique circumstances (though there are similarities as compared to the Discipline Committee's findings in 2015 regarding Patient DB).

Case Law

Although the Discipline Committee's previous decisions are not binding, the Committee accepts as a principle of fairness that like cases should be treated alike. As stated by the Divisional Court in *Re Stevens and Law Society of Upper Canada* 1979 CanLII 1749 (ON SC), and adopted by the Ontario Court of Appeal in *CPSO v. Peirovy* (2018):

> A conscious comparison should be made between the case under consideration and similar cases wherein sentences were imposed. If the comparison with other cases is not undertaken, there may well be such a wide variation in the results so as to constitute not simply unfairness but injustice.

Each case, however, is unique. The Committee reviewed the case law presented by the parties, but found no case identical to the current case. Some cases have similarities. At one end of the spectrum, there have been recent cases of boundary violations that have resulted in a reprimand but not a suspension or the requirement of a practice monitor. These cases have

proceeded by agreed statement of facts and a joint submissions on penalty in which the physicians had admitted the allegations and had generally expressed remorse (see *Kirsh* 2009, *Silver* 2009, *Moore* 2013).

There are several other cases of boundary violations that resulted in suspensions of the physicians' certificates of registration, but not in the imposition of terms, conditions and limitations requiring a practice monitor. *CPSO v. McInnis* (2013) involved a physician in the Armed Forces who admitted to the allegation of disgraceful, dishonorable and unprofessional conduct in regard to two patients. He made comments about the first patient's appearance and gave her a hug. He commented on the second patient's breasts after breast augmentation, embraced her at the end of an appointment and telephoned her at her home after the appointment. Dr. McInnis' certificate of registration was suspended for three months.

The decision in *Hajcsar, E. E. (Re)* (2014) involved a family physician who provided cosmetic treatments. He admitted to engaging in professional misconduct with a patient he had treated for many years. This involved inappropriate comments (i.e., "Still beautiful as I see"), brushing back of the patient's hair, occasional hugging or putting an arm on her shoulder. After injecting filler in the patient's lips, he offered to "test" her "new" lips and kissed her on the lips. Several mitigating factors were present in that case: he admitted that he had engaged in disgraceful dishonourable or unprofessional conduct, he voluntarily completed a boundaries course prior to the hearing, and he had no previous discipline history with the College. He received a suspension of two months, but was not required to have a practice monitor during examination of female patients.

In another case, *CPSO v. Redhead* (2013) Dr. Redhead was found to have engaged in disgraceful, dishonorable and unprofessional conduct by beginning a sexual relationship with a patient about one month after ending the doctor-patient relationship, and for giving the woman gifts. He received a five-month suspension and was required to complete instruction in professionalism and ethics.

In *CPSO v. Tenen* (2013), Dr. Tenen, a psychiatrist, admitted that he had engaged in disgraceful, dishonourable and unprofessional conduct with regard to two patients. He provided psychotherapy to the first patient for about two years. He occasionally put his arm around her shoulder or gave her a hug; he commented on her perfume; and on one occasion kissed her on the lips at the end of a session. He had treated the second patient for 11 years. He exchanged brief hugs with her, kissed her on the cheek and asked to see the surgical incision on her back, requiring her to lift her shirt, at a time when she was in the midst of an eroticized transference. Following a joint submission on penalty, the Committee ordered a three-month suspension and imposition of terms conditions and limitations on Dr. Tenen's certificate of registration, including a period of clinical supervision followed by practice reassessment. Dr. Tenen admitted his unacceptable behaviour, voluntarily completed the College's boundaries course and had no previous findings of professional misconduct over a 30-year career.

In *CPSO v. Parikh* (2013), Dr. Parikh, a general practitioner, had treated a vulnerable patient with depression and anxiety for over five years. He hugged the patient in the clinical room, which the patient felt had a sexual intent. He gave this patient his cell phone number and engaged in regular contact. He also provided funds to help her with her financial difficulties. The case proceeded by an agreed statement of facts and admission and a joint submission on penalty. The Discipline Committee's order included a two-month suspension of Dr. Parikh's certificate of registration, the requirement for a chaperone to be present for every clinical encounter with a female patient, and the requirement that Dr. Parikh take courses in ethics and understanding boundaries.

ANALYSIS

After carefully considering the nature of Dr. Peirovy's professional misconduct, the aggravating and mitigating factors in this case, and the case law, the Committee determined that the imposition of a two-month suspension of Dr. Peirovy's certificate of registration and a reprimand are appropriate in this case. The Committee did not find that the imposition of

terms, conditions, and limitations on Dr. Peirovy's certificate of registration was necessary in the circumstances of this case.

Terms, Conditions and Limitations

The Committee carefully considered whether the imposition of terms, conditions and limitations is required.

College counsel submitted that an appropriate order in this case would include the imposition of terms, conditions and limitations, including requiring a practice monitor for patient encounters. Counsel for the College submitted that the proposed practice monitoring would apply to all patient encounters and not only contacts with female patients, given the recent changes to s. 51(2)3 of the Code in May 2017, which prohibit the imposition of any terms, conditions and limitations that are gender based.

Dr. Peirovy's certificate of registration is currently subject to terms, conditions and limitations further to his discipline hearing in 2015-16. In addition to a six-month suspension, a reprimand and the requirement to pay costs, the Committee ordered the imposition of the following terms conditions and limitations on Dr. Peirovy's certificate of registration, which currently remain in effect:

- A practice monitor who is a female member of a regulated health profession acceptable to the College who is present at all professional encounters with female patients of any age;
- This practice monitor will keep a log of patient contacts for all female patients with whom Dr. Peirovy has an in person professional encounter. This log must be submitted to the College;
- Dr. Peirovy must inform the College of each and every location that he practices;
- He must post a sign in his waiting room, examining and consulting rooms notifying patients of the requirement that he must practice with a monitor for all female patient encounters;

- Monitoring, involving the College making inquiries to OHIP with regard Dr. Peirovy's compliance with the terms of this order. He may also have periodic unannounced inspections of his practice locations and patient charts, and through disclosure by the practice monitor to the College of any and all information that the College deems necessary;
- Individual instruction with an expert on communication, boundaries issues and doctor-patient relationships. This individual must report to the college on Dr. Peirovy's progress every six months;
- Have a clinical education program directed by a supervisor/educator acceptable to the College regarding the issue of physical examination, sexual privacy and sensitivity to female patients;
- All of the above terms and conditions to be at Dr. Peirovy's expense.

The practice monitoring ordered related to encounters with female patients; there was no requirement for non-gender based terms, conditions and limitations at the time the order was made.

Counsel for Dr. Peirovy questioned whether a non-gender based practice monitor was even possible in this case because of the wording in the Notice of Hearing. The Notice of Hearing issued on February 24, 2016, set out the legal provisions that the College was relying upon, and those legal provisions did not include section 51(4.1), the new provision which prohibits the imposition of gender-based terms, conditions and limitations under section 51(2)3. Counsel for

Dr. Peirovy submitted that the College should have sought an amendment to the Notice of Hearing to include this new legislative provision.

College counsel submitted that the reference on page 2 of the Notice of Hearing to section 51(2)(3) states:

> "If the panel finds that a member has committed an act of professional misconduct, it may make an order doing one or more of the following: directing the Registrar to impose specified Terms, Conditions and Limitations on the member's certificate of registration for a specified or indefinite period of time."

College counsel noted that the terms, conditions and limitations are specifically set out in the Notice of Hearing. There is no requirement to list what is going to be sought at the penalty hearing with any more specificity than that.

The principle of fairness requires that a member should know the case he or she has to meet without being taken by surprise (Canada law Book, 2018). According to, "A Complete Guide to the Regulated Health Professions Act" by Richard Steinecke: "Notices of Hearing are reviewed on a standard of adequacy, not one of perfection. As there is no specific statutory requirement for the Notice, the general rule is that an administrator must give adequate notice to permit the affected persons to know how they might be affected and to prepare themselves adequately to make representations". The Committee found that the Notice of Hearing in this case meets these requirements and clearly specifies that the Committee may order the imposition of terms, conditions and limitations on the member's certificate of registration. It need not go further to require reference to section 51(4.1).

Legislation is characterized as retrosp*e*ctive if it provides new consequences for past conduct. There is a general presumption that legislation should not be applied in a retrospective manner to conduct which pre-dates the legislative change. However, there are two circumstances where this presumption is capable of rebuttal. The first is when the legislation is procedural in nature; and in this instance, the amendment is substantive, not just procedural. It is substantive because it defines the penalty that may be imposed. The second circumstance is if the primary purpose of the legislation is public protection (*CPSO v. Kunynetz* (2018)).

The purpose of non-gender-based practice monitoring is to protect the public. This has been accepted by the Discipline Committee in *CPSO v Lee* (2017). The legislature's intention in

enacting the legislation is clear and reflected in the title of the amending legislation: *Protecting Patients Act*, 2017. Therefore, the Committee concludes that these provisions have retrospective application.

However, neither the facts in this case nor the penalties imposed in similar Discipline Committee cases reviewed by the Committee justify the imposition of the proposed terms, conditions and limitations, including a requirement for a practice monitor, for the misconduct found to have been committed in the current case, in providing a patient with his cell phone number for personal reasons, without medical justification. There is no allegation of sexual abuse, and no finding of an inappropriate examination of the patient.

The Committee therefore finds that the imposition of the proposed terms, conditions and limitations, including the non-gender based practice monitor in relation to Dr. Peirovy's misconduct, is not warranted or required in the interests of public protection.

Conclusion

The Committee concluded that a two-month suspension will serve to maintain the integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest. The penalty is appropriate in the unique circumstances of this case and is in keeping with the range of penalties ordered in similar Discipline Committee cases. In addition, the suspension serves as a specific deterrent to Dr. Peirovy and a general deterrent to the profession as a whole. The reprimand also meets those goals, as well as enables the Committee to express the Committee's disapproval of Dr. Peirovy's behaviour in using a medical appointment as an opportunity to hand out his cell phone number to a patient for personal reasons, and having no medical justification. It is important to send a strong message that there are consequences to Dr. Peirovy for his boundary crossing.

Furthermore, the Committee is of the opinion that the terms, conditions and limitations on Dr. Peirovy's certificate of registration that are currently in effect, including the requirement that Dr. Peirovy have a female chaperone present for all female patient encounters, and signage indicating this requirement, ensure public protection against future boundary violations by Dr. Peirovy.

COSTS

The College requested that Dr. Peirovy be ordered to pay to the College costs calculated on the per diem tariff in effect at the time of each hearing day, for each of the five days of hearing, for a total of $36,860.00.

Counsel for Dr. Peirovy submitted that in the penalty hearing, one entire day was spent dealing with the admissibility of College proposed evidence, which did not proceed. As such, Dr. Peirovy submitted he should not be responsible for costs for that day of hearing. Counsel for Dr. Peirovy also submitted that the success at the liability hearing was "divided", and, therefore, Dr. Peirovy should be responsible for half of the cost of the liability hearing.

Counsel for Dr. Peirovy submitted that costs against Dr. Peirovy should be fixed at $18,430.00.

The Rules of Procedure of the Discipline Committee set out the mechanism for calculating cost awards. Costs are intended to be compensatory and not punitive.

In *CPSO v. Garcia* (2018), the Committee set out a useful framework for assessing costs. The Committee noted that it is provided significant latitude and discretion in awarding costs and that it must be mindful of the specific facts associated with the case before it. The Committee in *Garcia* set out the following factors to be considered in determining the issue of costs:

- the nature of the misconduct;
- any settlement offer made in writing;
- the member's failure to acknowledge any error or to act reasonably and professionally to avoid a hearing;
- the relative success of the parties;
- the costs of the investigation and hearing;
- the nature of the member's defence; and
- the impact of the costs order on the member's ability to continue to practice.

Counsel for Dr. Peirovy also submitted that in determining the issue of costs, the Committee should consider the manner of distribution of documents, which he contends was not in keeping with an agreement that had been made between the parties.

The Committee expects counsel to comply with agreements made between them regarding when materials are distributed and received, and wish counsel to work collegially. In this case, the Committee received all submissions at the same time and no party was disadvantaged by the process followed. The Committee were appreciative of receiving written submissions from both parties at this hearing. This was not a factor in the award of costs in this case.

As noted in *Garcia*, success from a cost perspective is not determined by whether a party is successful in arguing an objection, a motion or an issue in a *voir dire* during the course of a hearing. The Committee treats motions, objections and *voir dires* as part of the normal course of business of the hearing.

In exercising its discretion to award costs, the Committee orders that Dr. Peirovy pay to the College costs in the amount of $28,610. This award of costs is based generally on Dr. Peirovy paying for three days of the liability hearing at half the then tariff rate of $5,500 ($2,750 x 3 = $8,250). In addition, he is to pay costs at the full tariff rate of $10,180 for each of the two days of the penalty hearing. The Committee recognizes that this costs award does not cover the actual cost to the College in conducting an investigation and discipline hearing.

ORDER

Therefore, the Committee orders and directs that:

1. The Registrar suspend Dr. Peirovy's certificate of registration for a period of two (2) months, to commence 30 days from the date of this Order;
2. Dr. Peirovy shall appear before the panel to be reprimanded within 60 days of the date of this Order;
3. Dr. Peirovy pay to the College costs in the amount of $28,610 within 45 days of the date of this Order.

TEXT of PUBLIC REPRIMAND
Delivered September 25, 2019
in the case of the

COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO

And

DR. JAVAD PEIROVY

Dr. Peirovy,

It is always unfortunate when a member of our profession appears before this Committee.

We find you have dishonoured the profession by your conduct. Beginning a romantic relationship with a patient in your office reflected a significant erosion of the boundaries vital to an effective physician-patient relationship. These inappropriate relations occurred in the medical office at the end of the clinical examination, with a vulnerable young woman, who trusted you, as her physician.

Boundaries are the parameters that describe the limits of a relationship in which one person entrusts his or her welfare to another. For physicians, this encompasses an ethic of care and tradition of comfort and healing which cannot otherwise be attained. It is always the physician's responsibility to maintain appropriate boundaries.

Your behaviour was not an isolated, impulsive incident - you followed up with this young woman even when you had an opportunity to close off this serious ethical breach. Physicians are taught early in medical school and throughout our training that we have an ethical obligation to not exploit the trust, power imbalance and dependence that characterize our relationship with our patients. A physician's duty is to act in the patient's best interest and you failed to do so with this young woman. Your selfish behaviour has brought disgrace not only to yourself, but to the broader profession. Your actions must be condemned in the strongest terms.

We can only hope that this process has prompted you to undergo a long, hard, searching, self-examination.