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 identity of any information that could identify the complainants under subsection 47(1) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

> Every person who contravenes an order made under … section 45 or 47… is guilty of an offence and on conviction is liable,
>
> > (a) in the case of an individual to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence; or
> >
> > (b) in the case of a corporation to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence.

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Peirovy, 2015 ONCPSD 30

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. M. GABEL (CHAIR)
D. DOHERTY
DR. J. WATTS
D. GIAMPIETRI (Hearing on finding only)
DR. R. SHEPPARD

Hearing Dates:	**January 12 to 16 and 27, 2015**
Decision Date:	**July 17, 2015**
Release of Written Reasons:	**July 17, 2015**
Hearing Dates on Penalty:	**October 26, 2015 and October 30, 2015**
Decision Date on Penalty:	**April 27, 2016**
Release of Written Reasons on Penalty:	**April 27, 2016**

PUBLICATION BAN

On January 17, 2017, the Divisional Court granted the College's appeal of the decision on penalty, quashed the penalty order and remitted the matter to the Committee.

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 January 12 to 16 and 27, 2015. At the conclusion of the hearing, the Committee reserved its decision on finding.

ALLEGATIONS

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

1. under paragraph 1(1)33 of 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;
2. under clause 51(1)(b.1) of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the "Code") in that he engaged in the sexual abuse of a patient; and
3. under clause 51(1)(a) of the Code in that he has been found guilty of an offence that is relevant to his suitability to practise.

RESPONSE TO ALLEGATIONS

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

FACTS AND EVIDENCE

A. Overview of the Issues

Dr. Javad Peirovy is a 44-year-old family physician. In 2009 to 2010, he was working at a number of walk-in clinics in City 1. The allegations set out in the Notice of Hearing (exhibit 1) are in relation to six patients whom he had seen in the walk-in clinics. All were young women, between the ages of 18 and 32 at the material times. Five of these patients were seen by Dr. Peirovy on one occasion only; the sixth, he saw three times.

The allegations of sexual abuse arise from the complaints of these six patients that Dr. Peirovy touched their breasts in an inappropriate fashion during the course of medical examinations. One patient alleges that, during Dr. Peirovy's examination of her, her breasts were left fully exposed; subsequently, at the conclusion of the examination, she alleges that Dr. Peirovy asked her out on a date. The College alleges that Dr. Peirovy's actions in relation to these six patients constitute sexual abuse, as defined in the Code. The College also alleges that Dr. Peirovy's conduct with respect to these patients would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

The College argues that the evidence of each of the six patients can be used to support the evidence of the others as, in the circumstances of this case; this would be an acceptable use of "similar fact evidence". Dr. Peirovy opposes the College's position on this issue.

Dr. Peirovy was charged criminally with six counts of sexual assault in relation to the allegations of these six patients. He eventually pleaded guilty to the lesser offence of simple assault, with respect to two of them. The remaining charges were withdrawn by the Crown. The College alleges that, as a result, Dr. Peirovy has been found guilty of an offence that is relevant to his suitability to practise.

Dr. Peirovy denies the allegations contained in the Notice of Hearing. Dr. Peirovy acknowledges that he may have touched the breasts of the complainants while he was examining them. He denies that this was touching or behaviour of a sexual nature. He acknowledges that he suggested to one patient that they could go out on a date; he denies that this constituted behaviour or remarks of a sexual nature. Dr. Peirovy admits that he has been found guilty of two counts of simple assault in relation to two of the complainants. He argues that having been found guilty of theses offences is not relevant to his suitability to practise medicine.

In support of the allegations contained in the Notice of Hearing, the College presented evidence which included the testimony of the six complainants: Ms. U, Ms. V, Ms. W, Ms. X, Ms. Y, and Ms. Z. The relevant clinical records, with respect to each of these

patients, were also entered into evidence (exhibit 2). The College also introduced expert evidence, consisting of the testimony and some written correspondence of Dr. A.

Dr. Peirovy testified in his defence. Counsel for Dr. Peirovy also introduced expert evidence, consisting of the testimony and the written reports of Dr. B.

Both expert witnesses referred to numerous textbooks and other authoritative references on the issue of the clinical examination of the heart and lungs, and the use of the stethoscope in the clinical examination. These include excerpts from USMLE lectures pertaining to the examination of the respiratory system; excerpts from the University of Leicester Clinical Skills Online, respiratory examination; excerpts from Macleod's Clinical Examination, 13th Edition; excerpts from the Bates' Guide to Physical Examination and History Taking, 8th Edition; excerpts from the University of Virginia Department of Family Medicine, Cardiac Exam Video (screenshots), and others.

The issues to be determined by the Committee, therefore, are as follows:

- Did Dr. Peirovy's actions with respect to any or all of the six patients constitute sexual abuse, as defined by the Code?
- Would Dr. Peirovy's conduct in relation to any or all of the six patients reasonably be regarded by members as disgraceful, dishonourable, or unprofessional?
- Can the evidence of any or all of these six patients be used to support the evidence of the others, in accordance with the acceptable use of "similar fact evidence"?
- Are Dr. Peirovy's convictions for assault, in relation to two of these patients, relevant to his suitability to practise?

For the reasons that follow, the Committee finds:

- The College has proven, on a balance of probabilities, that Dr. Peirovy sexually abused Ms. U, Ms. V, Ms. W, and Ms. X.

- Dr. Peirovy's conduct with respect to these four patients would also reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.
- The College has proven, on a balance of probabilities, that Dr. Peirovy's conduct in relation to Ms. Z would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.
- The allegations that Dr. Peirovy sexually abused Ms. Y, and/or that his conduct with respect to Ms. Y would reasonably be regarded as disgraceful, dishonourable, or unprofessional, have not been proven.
- The evidence of four of the complainants, patients Ms. U, Ms. V, Ms. W, and Ms. X, can be used to support the evidence of one another with respect to the allegations that these patients were sexually abused by Dr. Peirovy.
- The allegation that Dr. Peirovy has been found guilty of offences relevant to his suitability to practise is proven.

B. Summary of the Evidence

The Complainants

Ms U

Ms U was in her twenties when she saw Dr. Peirovy at a Walk-in Clinic in City 1, in March 2010. She was apparently suffering from a sinus infection. She had gone to the clinic the previous day, when she had seen a different physician and had been given a prescription for antibiotics. She was unable to fill the prescription, however, apparently because it was lacking a Limited Use code. Ms. U returned to the clinic hoping to have that rectified.

Ms U testified that she saw Dr. Peirovy, and that he advised her that the medication, which had been prescribed for her the previous day, was not the right one for a sinus infection. He indicated that he should examine her to determine what she needed, and she agreed to be examined. Dr. Peirovy's examination of Ms. U included listening to her chest with his stethoscope. Ms. U stated that, during the course of this examination, and

while she was lying supine on the examination table with her face turned towards the wall, Dr. Peirovy informed her that he needed to lift her clothes in order to listen to her chest. She agreed to this. Dr. Peirovy proceeded to place his stethoscope on several locations on both of Ms. U's breasts, including directly on top of her nipples. She felt his hand, holding the stethoscope, cupping her breasts. She was instructed to breathe in and out while this was occurring.

Ms U stated that she felt immediately that Dr. Peirovy had touched her inappropriately. She felt frightened and angry that her privacy had been violated. She testified that she had previously been examined by other physicians, but these previous examinations had not included the touching of her breasts in this way. She stated that, while Dr. Peirovy had asked her permission to lift her clothes so that he could auscultate her chest, she had not given him her permission to touch her breasts. When she left the clinic, Ms. U was crying and upset. She informed her boyfriend, who was waiting for her outside in the car, about what had happened. Ms. U and her boyfriend then returned to the clinic where they spoke to Dr. Peirovy and informed him of their dissatisfaction. According to Ms. U, Dr. Peirovy apologized for making her uncomfortable. A couple of days later, she initiated her complaint to the College.

Ms U confirmed that she had no knowledge of, and had never spoken to, any of the other complainants in the current proceeding.

Ms V

Ms V saw Dr. Peirovy once at a Walk-in Clinic in City 1. The date was in November 2009. She was a teenager at the time. Ms. V had gone to the clinic complaining of a sore throat, because her regular family doctor was not available.

Ms V testified that, during the course of his examination of her, Dr. Peirovy placed his hand, holding his stethoscope, under her clothes and touched her breasts. He placed his hand under her bra while she was lying supine on the examination table, placing the stethoscope directly on her nipples, on both the left and right breasts. She recalled feeling

slight pressure on her nipples for a duration of roughly five seconds. She stated that Dr. Peirovy said nothing to her as this was occurring, and that he had not asked for permission to examine her in this way.

Ms V stated that she immediately felt shocked and violated. She had chest examinations by other physicians previously, but Dr. Peirovy's examination was very different. She did not report this incident immediately, but eventually told her mother and later the police. She stated that she decided to report Dr. Peirovy after she had seen an article about him online pertaining to the allegation of another complainant; the article contained no details of the allegation. She recognized Dr. Peirovy as the physician who had touched her as described above, and she decided to come forward with her allegation at that time.

Ms V, in her evidence, acknowledged that she had earlier been confused about the date of the incident with Dr. Peirovy. In an earlier statement to the police, given in November 2010, she had estimated the date as mid-April of 2010. Now, having seen the record, she understands that she had been mistaken and that the incident occurred in November 2009. Ms. V acknowledged, also, some inconsistencies in the precise wording she had used to describe Dr. Peirovy's touching of her breasts, in prior statements.

Ms V indicated in her evidence that she had applied to the Criminal Injuries Compensation Board. She admitted that her application contained inaccuracies as, for example, when she indicated that Dr. Peirovy had been convicted of "sexual assault x 6". She acknowledges now that this was untrue. Ms. V acknowledged, also, that she had been terminated from a previous place of employment on account of allegations of theft, allegations which she denied.

Ms V confirmed that she had no knowledge of, and had never spoken to, any of the other complainants in the current proceeding.

Ms W

Ms W saw Dr. Peirovy on one occasion in the summer of 2010. The date was in July 2010. Ms. W had gone to the clinic because she was feeling unwell, with cold symptoms. She thought that she might need an antibiotic.

Ms W testified that, as Dr. Peirovy was listening to her chest with his stethoscope, he slid his hand under her clothes and touched her nipples with his fingers. He asked her to take deep breaths, and to cough, while he was listening to her chest. He examined the left side of her chest first, and touched her left breast as indicated, which made her very uncomfortable. When Dr. Peirovy was preparing to examine the right side of Ms. W's chest, she had tried to make it difficult for him to get his hand under her clothes, by pulling her shoulders back to tighten the clothing over her chest. Dr. Peirovy persisted, however, and inserted his hand underneath her bra, touching her right nipple. Ms. W stated that she had previous examinations of her chest by other physicians, but that her breasts had not been touched in this way before. Dr. Peirovy had not asked for her permission to examine her in this way.

Ms W stated that, following the physical examination, Dr. Peirovy had engaged her briefly in conversation about her ethnic background. She told him that she was of European origin, and he had made a comment about liking women of this European origin because "they're very family-oriented", or words to that effect. She found his comments odd and it increased her level of discomfort with the interaction.

Ms W stated that, as soon as she left the clinic, she called a girlfriend, her husband, and another friend to discuss what had happened. She acknowledged that, initially, she had been confused about what had occurred, and she was not sure whether it had been appropriate or not. She wanted to speak to her friends and her husband to get their impressions. Ms. W was upset and could not sleep that night. The next day she called the police and, the following day, reported her allegation to the College. Ms. W confirmed that she had no knowledge of, and had never spoken to, any of the other complainants in the current proceeding.

Ms X

Ms X saw Dr. Peirovy on one occasion, in February 2010. She was in her twenties at the time. She had gone to the clinic because she was having issues with her sinuses and ears; her regular family physician was in City 2, but she was living in City 1 at that time.

Ms X stated that, in examining her chest while she was lying supine on the examination table, Dr. Peirovy placed his hand, holding his stethoscope, under her bra. He touched her breasts with his hand. She recalled his hand cupping her breasts, with his fingers putting pressure on her nipples, which she described as "tweaking"; she described this as a grasping or pinching of the nipple between two of Dr. Peirovy's fingers. He was listening to her breathing as he was touching her breasts in this way. Dr. Peirovy did not explain what he was doing, and he had not asked her permission to examine her in this way. Ms. X testified that Dr. Peirovy's examination of her chest was different than previous examinations which she had experienced by other physicians, which had not included the touching of her breasts or nipples.

Ms X stated that, while she was being touched by Dr. Peirovy, she was "in shock". She was frozen and knew that what was happening was wrong; in her mind she thought of Dr. Peirovy as "a pervert".

Ms X stated that, on leaving the clinic, she was upset and angry. She felt angry also at herself, for not having confronted Dr. Peirovy. She told her boyfriend and her mother what had happened, but did not report the incident to the authorities until later. In August 2010 Ms. X saw a television report that Dr. Peirovy had been charged with sexual assault, which prompted her to call the police and disclose what had happened to her. The press report that she saw contained no details of the other allegations against Dr. Peirovy. Ms. X confirmed that she had no knowledge of, and had never spoken to, any of the other complainants in the current proceeding.

Ms Y

Ms Y was in her twenties when she saw Dr. Peirovy on three occasions in October 2010. She saw Dr. Peirovy at a walk-in clinic in City 1. Ms. Y testified that she was having problems with anxiety and job-related stress at the time, and that she had seen Dr. Peirovy for this reason. About a month earlier she had gone to a different clinic and had seen a different physician, receiving a prescription for Ativan. She wondered whether this medication should be renewed.

As indicated, Ms. Y saw Dr. Peirovy three separate times. A female nurse was present on each occasion, and had remained present throughout the course of Dr. Peirovy's interactions with Ms. Y on the three dates in question. Ms. Y testified that, on her first visit, she informed Dr. Peirovy about the nature of her problem. He had examined her in a limited fashion and ordered some blood work, asking her to come back in a few days.

On the occasion of her second visit Ms. Y states that she was told by Dr. Peirovy that her blood pressure was a bit high, but that the investigations which he had ordered had been negative. Dr. Peirovy proceeded to place his stethoscope under Ms. Y's clothes, on the left side of her chest, first while she was standing next to the examination table, subsequently while she was sitting. He explained to her that he was checking her heart rate; she stated that this had been previously taken by the nurse, but that Dr. Peirovy wanted to check it himself. She recalls that there was a minor difficulty with the covering for the examination table and, apparently as a result, the examination occurred while she was standing or sitting.

Ms Y stated that, in the course of Dr. Peirovy's examination of her, he had his hand on her breast, cupping the breast, for from five to ten seconds. She felt his hand graze her nipple. He removed his hand from under her clothes and said "I didn't feel your heart at all", or something to that effect.

Ms Y stated that her reaction to being touched in this way was disbelief. She questioned to herself why a doctor would feel her breast in this fashion. She said that this had never

happened to her before, in previous examinations with different physicians. She had not given her permission to being touched like that, and it had made her uncomfortable.

Ms Y saw Dr. Peirovy for a third time a few days later. She had called the clinic to ask if she could see him again and she was told that she could; her reasoning was that she had already seen him twice, and he was familiar with her problems. On her third visit, she asked Dr. Peirovy to provide her with a note allowing her to be off work on stress leave. He indicated, however, that he did not provide such notes. Ms. Y testified that nothing particularly untoward happened during her third visit with Dr. Peirovy, except that she had felt vaguely uncomfortable at the way he had smiled at her, and at some of his other mannerisms.

Later, after leaving the clinic, Ms. Y stated that she googled Dr. Peirovy's name and found an article indicating that he had been charged with sexual assault. No details of the other allegations against Dr. Peirovy had appeared in the article. Subsequently, Ms. Y told her boyfriend what had happened, and then contacted the authorities.

Ms Y confirmed that she had no knowledge of, and had never spoken to, any of the other complainants in this proceeding.

Ms Z

Ms Z saw Dr. Peirovy on one occasion, in March 2010. She was in her twenties at the time. She had been referred to Dr. Peirovy by her family physician, Dr. C, because she was having heart palpitations and Dr. C felt that an echocardiogram was required. Apparently, Ms. Z was required to see Dr. Peirovy, who worked at the clinic where the echocardiograms were done, in order to have this procedure.

Ms Z testified that she was examined by Dr. Peirovy. She was wearing a tank top with a bra underneath. After examining her back, Dr. Peirovy asked her to lie on her back on the examination table. He auscultated her upper chest above her clothes, then asked her to undo her bra and lift her clothing. She did so, with the result that her breasts were fully

exposed. Dr. Peirovy did not explain to her what he was doing, nor did he offer her a gown or other covering for her exposed breasts. In the course of auscultating her chest with his stethoscope, Dr. Peirovy touched her left breast with one of his hands, cupping and pushing against the outer aspect of the breast with what she recalls as firm pressure. She does not recall him touching her nipple. She had never experienced an examination like this before, in which her breasts were fully exposed and touched in this fashion. She felt uncomfortable as a result.

At the conclusion of the examination, Ms. Z testified that Dr. Peirovy told her he would order an echocardiogram. He then proceeded to engage her in conversation about the neighbourhood in which she lived. This culminated in him asking her out on a date; in Ms. Z's mind his intention was clear, which was to initiate some sort of social contact with her in the future. She recalls that Dr. Peirovy explained to her that, if they were to see each other socially, he could not be her doctor. He asked her to sign a notation on her chart terminating the doctor/patient relationship. Ms. Z, feeling extremely uncomfortable with the totality of her encounter with Dr. Peirovy, stated that she was glad to sign a document indicating that she would not henceforth be his patient. She stated that she just wanted to conclude the appointment and leave as quickly as possible. She signed the note as requested. Dr. Peirovy said that he would call her, and she left. She did not receive any calls from Dr. Peirovy, however, and she had no further communication with him.

Ms Z testified that subsequently, she did return to the clinic where she had been examined by Dr. Peirovy, in order to have the echocardiogram. She had insisted, however, that she would not see Dr. Peirovy again and, after some initial disagreement on this point, she was not required to do so.

Ms Z initially did not come forward with her complaint about Dr. Peirovy. Several months later, she was seeing her regular physician, Dr. C. She stated that Dr. C asked her if she had heard about Dr. Peirovy, indicating that he had been charged with sexual assault. Ms. Z subsequently read some media reports in this regard, which did not contain

details of any of the other allegations against Dr. Peirovy. She decided to come forward with her complaint at that time.

Ms Z stated that she had no knowledge of, and had never spoken to, any of the other complainants in this proceeding.

The Expert Evidence

Dr. A

Dr. A is a family physician who has practised at the Humber River Hospital in Toronto for 42 years. A copy of his curriculum vitae was entered into evidence (exhibit 11). He maintains an active family practice, and previously did peer assessments for the College between 1992 and 2006. He has also acted as a practice mentor and supervisor for the College, and as a medical inspector, assisting in College investigations. Dr. A confirmed that he had been retained by the College to provide an opinion regarding Dr. Peirovy. A copy of his completed Form 7 (Acknowledgement of Expert's Duty) was entered into evidence (exhibit 12).

The Committee finds that Dr. A is clearly a very experienced clinician. He has conducted tens of thousands of lung and heart examinations in the family medicine context. He was qualified by the panel as an expert in family medicine.

Dr. A's testimony included a general description of how a history is taken, and how a physical examination of the lungs and heart is conducted in a primary care setting. In this regard, he referred to a number of diagrams extracted from the Bates Guide for Physical Examination and History Taking (exhibit 16) in his evidence. He testified about some issues relating to the use of the stethoscope for auscultation of the lungs and heart, including the proper placement of the stethoscope on the chest, and the effect of clothing worn by the patient as potentially interfering with optimal auscultation.

Dr. A addressed also the different approaches that might be required in chest examinations of male and female patients. He testified that breast tissue, being relatively dense, might interfere with the transmission of sound to the stethoscope. The preferable approach, accordingly, would be to try to avoid auscultating directly over breast tissue. Dr. A drew attention to the sensitivity of the female breast, both in terms of tactile sensitivity and with respect to the patient's modesty. On occasions where the female patient might be required to disrobe, he indicated that a gown or other covering should be offered to the patient in order to protect their modesty.

Dr. A stated that, in his opinion, there would never be a need for the examining physician to place his stethoscope under a female patient's bra in order to auscultate the chest. This should be avoided for several reasons. The presence of the bra might result in extraneous sounds which would interfere with the examination. Furthermore, in Dr. A's opinion, reaching under the patient's bra with the stethoscope might be considered overly intrusive, disrespectful to the patient, and likely to compromise the patient's personal privacy and modesty. A preferable approach would be to ask the patient to remove her bra, if this was necessary for a thorough examination, and to provide her with a gown.

Dr. A stated that, in his opinion, it would never be necessary for an examining physician to place the stethoscope on a patient's nipple. It would be an ineffective method of auscultation, and the sensitive tissue of the nipple would cause the patient discomfort. Touching of this nature could be misinterpreted by the patient. Dr. A testified also regarding the usual method of examining the heart, including with respect to the placement of the stethoscope on the patient's chest for auscultation. He stated that, in female patients, the left breast may overlie the apex of the heart, which is the area where the mitral valve is best heard. There might, therefore, be a need for the breast to be displaced, in order to conduct a thorough examination. In this case, in Dr. A's opinion, the patient should be asked to remove her clothing including the bra, and provided with a gown or other appropriate cover. The patient could be asked to displace the breast herself, or the physician could ask the patient's permission to displace the breast himself, with an explanation of why this was necessary. As in the course of lung examinations, there

would never be a medical necessity for the physician to place the stethoscope under the bra of a female patient, or for the physician to touch the patient's nipple.

Dr. A stated his opinions with respect to Dr. Peirovy's examinations of the six complainants in this case.

Regarding Ms. U, Dr. A stated that Dr. Peirovy's decision to examine her lungs was clinically appropriate. It was Dr. A's opinion, however, that the manner in which the examination was conducted, according to the patient's description of this, was not medically necessary. There was no medical necessity for Dr. Peirovy to place his stethoscope on Ms. U's breast and nipple, or to cup her breast in his hand.

Regarding Ms. V, Dr. A stated that, again, it was clinically appropriate for Dr. Peirovy to have conducted a lung examination. Again, however, there was no medical necessity for Dr. Peirovy to have slid his stethoscope under her shirt and bra, or to have placed his stethoscope on Ms. V's nipples.

With respect to Ms. W, Dr. A stated that a lung examination, again, was clinically appropriate. There was no medical necessity, however, for Dr. Peirovy to have slid his hand, holding the stethoscope, down her breasts so that his fingers touched her nipple.

With respect to Ms. X, Dr. A stated that it was not unreasonable for Dr. Peirovy to have examined her lungs, although she had presented primarily with upper respiratory symptoms. Again, however, it was Dr. A's opinion that there was no medical basis for Dr. Peirovy to have placed his hand, holding the stethoscope, under her bra, cupping her breast with his hand, and with his fingers applying pressure to her nipples.

With respect to Ms. Y, Dr. A focused on her second visit to Dr. Peirovy in October 2010. He stated that a physical examination of this patient, including of her heart, was appropriate under the circumstances. There was no medical necessity, however, for Dr.

Peirovy to have placed his stethoscope under her clothing, with his hand cupping her breast and grazing her nipple, in order to take her heart rate or examine her heart.

Regarding Ms. Z, Dr. A testified that, in his opinion, an examination of her heart was appropriate. Dr. A stated that it would have been necessary for Ms. Z to remove her bra so that the exam could be conducted. Dr. A further stated, however, that Ms. Z should have been given privacy to undress and that she should have been provided with a gown.

Dr. A in his testimony referred to the text Macleod's Clinical Examination, in relation to the physical examination of the respiratory and cardiovascular systems. He agreed that this was considered an authoritative source. He stated that the examinations depicted in this text were very thorough and extensive, more so than would ordinarily be expected of a family physician in a typical office setting. Dr. A agreed also that the further evidence introduced by Dr. Peirovy, extracted from the Bates text and from the USMLE lectures (exhibit 17), was authoritative. This evidence confirms that there are multiple positions on which the stethoscope can be placed in the course of auscultation of the anterior chest, up to 16 locations. Dr. A agreed that, without auscultating multiple locations on the chest, there is the possibility that pathology could be missed. He also agreed that some of these sources suggest stethoscope placement which would result in the physician's hand touching the female breast, with the possibility of incidental contact between the physician's fingers and the patient's nipples. Some areas of auscultation, particularly of the right middle lobe of the lung, would typically include locations which might often be covered by a female patient's bra. Dr. A agreed that there can be a tension between the physician's need to conduct a thorough examination, and the need to protect the patient's privacy. In Dr. A's opinion, if a thorough examination cannot be completed while the patient is wearing a bra, she should be asked to remove it and provided with a gown.

Dr. B

Dr. B is a Professor Emeritus in family medicine at the University of Western Ontario. His curriculum vitae was entered into evidence (exhibit 22). He has extensive experience in clinical practice and in teaching; he has taught clinical skills, including with respect to

physical examinations and communication with patients, to residents and students for many years. Dr. B has conducted thousands of physical examinations himself, although he has never worked in a walk-in clinic. He has a particular interest in doctor/patient communication, and has co-authored two books on this subject.

The Committee found that Dr. B was qualified to give expert evidence with respect to the physical examination of the heart and lungs in a family medicine context, and with respect to doctor/patient communication.

Dr. B's expert report was entered into evidence (exhibit 23). The sources of information which he had used in the preparation of his report are listed in the document. In addition, Dr. B had heard the evidence given by the six complainants in this case over the course of the proceedings. He had utilized this information in forming his opinions in this case.

Dr. B, in his evidence, referred to multiple academic sources (exhibits 17, 18, 19, 24 and 25) in describing for the Committee the principles and methods pertaining to the examination of the lungs and heart in both male and female patients. His testimony included reference to the relevant anatomy and the multiple locations for stethoscope placement during auscultation of the chest.

Dr. B outlined for the Committee the practice he employs in examining younger female patients with minor respiratory complaints, and in cases where an examination of the heart is required. He stated that his practice is to have the patient disrobe from the waist up and don a gown which opens at the back. He leaves the room while the patient is undressing. He then proceeds to inspect, percuss and auscultate the chest, first posteriorly and then anteriorly. He asks the patient's permission to drop the gown at the front, in order to examine the anterior chest, leaving the patient's breasts exposed. Dr. B auscultates multiple locations on the anterior chest, and holds his stethoscope between his index and middle fingers with his other fingers extended. He stated that, in this way, his fingers would make contact with the patient's breasts and that his stethoscope might be placed near the patient's nipples. Dr. B stated that it is possible for the physician to obtain

useful information by auscultating through breast tissue. If the physician avoids auscultating over breast tissue in females, important information might be missed, particularly pathology in the right middle lobe, which is particularly susceptible to infection. Dr. B stated that if the patient's breasts are large they might have to be displaced in order for thorough auscultation. Displacement of the breast could be done by either the physician or the patient. Dr. B stated that the only difference in his examination technique, with female as opposed to male patients, is that the female patients are provided with a gown.

Dr. B stated the nature of his interactions with his patients, prior to the physical examination, is important in making the patient comfortable and fostering a sense of trust. Although he typically spends 15 to 20 minutes with patients who present with these sorts of minor problems, only about five minutes of this is taken up by the physical examination. Prior to the examination, he greets the patient, listens to their concerns, empathizes with them, and expresses his desire to help. The therapeutic context has thus been established by the time he asks his patients to disrobe in preparation for the physical examination. It is Dr. B's view that his patients implicitly understand that disrobing is required in the interests of a thorough examination, and that they convey their consent by doing as instructed.

Dr. B testified that, in his opinion, Dr. Peirovy's usual method of examining the lungs and heart of patients in the walk-in clinic setting, as Dr. Peirovy had described this for the Committee, is acceptable. Although Dr. Peirovy's usual method differs from Dr. B's own practice, and involves examining patients underneath their clothing with the stethoscope placed on two or three locations on each side of the patient's anterior chest, in the walk-in clinic context, Dr. B found this to be a reasonable method. The patients' complaints were relatively minor, and the examination was essentially for the purpose of screening in order to detect the possibility of more significant problems. Dr. B stated that, in a walk-in clinic where there is limited time available to each patient, it is reasonable to save time by not requiring patients to disrobe and wear gowns.

Dr. B stated that, in his opinion, if a physician examining a patient in the manner described by Dr. Peirovy should make contact with a female patient's breast and/or nipple, this did not make the examination inappropriate. He noted that, having chosen to examine a female patient underneath her bra, there is therefore limited space for stethoscope placement and it is inevitable that the patient's breast will be touched. He indicated that, in order to reduce patient discomfort, explanations should be given before and during the examination with respect to what is taking place.

Dr. B testified regarding the specific complaints of the six patients in this case. He stated that, in his opinion, lung examinations were indicated with respect to Ms. U, Ms. V, Ms. W, and Ms. X. He stated also that heart examinations were indicated with respect to Ms. Y and Ms. Z. Having heard the testimony of these six patients during the course of this proceeding, Dr. B stated that, in his opinion, the examination in each case was clinically appropriate.

Dr. B stated that he, personally, would not examine a female patient, for purposes of a lung exam, under her bra, nor would he deliberately place his stethoscope on the patient's nipple. Dr. B acknowledged, also, on cross-examination, that if Dr. Peirovy were found to have acted as alleged by the complainants in this case, his actions could not be characterized as simply failure to communicate with his patients.

Dr. B testified also with respect to the issue of patient complaints about physicians. Citing some of the literature in this area, he stated that the biggest source of dissatisfaction among patients, leading to complaints, is problems in physician/patient communication. He testified that a number of "risk factors" have been identified in the literature which are associated with the frequency of patient complaints. These include situations where the physician was unknown to the patient and there was therefore no established trusting relationship; situations where the visits were short; discrepancies between the patient's expectations for what the examination would entail and what had in fact occurred; and the previous experience of patients with other physicians, who may

have examined them differently. Dr. B stated that, in his opinion, these risk factors were present with respect to the six patients who had complained about Dr. Peirovy.

Dr. Javad Peirovy

Dr. Peirovy is currently 44 years of age. He was born in Iran, and graduated from the Tehran Medical School in 1996. He spent two years doing medical service in the military, and later completed a residency in occupational medicine in Iran. Dr. Peirovy came to Canada in November 2001. He initially did a clinical research fellowship in occupational medicine at Toronto Western Hospital. He had some subsequent training in anesthesiology, and worked for the Ministry of Health and Long Term Care during the SARS epidemic. Eventually, Dr. Peirovy completed his residency in family medicine at Toronto Western Hospital. He received his certificate of registration in September 2008.

Between 2009 and 2010, the timeframe encompassing the complaints which are the subject of this proceeding, Dr. Peirovy was working in a number of walk-in clinics in City 1. He testified that he would generally work six to eight hours per day in these clinics, typically seeing from 40 to 50 patients a day. More than half of his patients would be female. Dr. Peirovy stated that he would often treat minor respiratory problems, and that he would frequently perform lung and chest examinations on both male and female patients.

Dr. Peirovy testified that, over the course of his training and subsequent clinical experience, he had developed a routine method of examining patients who presented with relatively minor respiratory complaints. He stated that, at walk-in clinics, time is limited and he would typically spend no more than ten minutes with each patient. He would start by taking a history of the presenting symptoms and would then usually examine both the upper and lower respiratory systems He would begin with the ears, nose and throat, then proceed to the lungs. His examination of the lungs was limited to auscultation. He would use his stethoscope to listen to the lungs by placing the diaphragm of the stethoscope directly on the patient’s skin, first on the patient’s back while the patient might be sitting

or standing, then on the anterior chest, with the patient lying supine on the examination table.

Dr. Peirovy stated that, with the patient lying on their back on the examination table, he would usually tell them to turn their head to the side away from him while he was examining their chest. This was because he would often ask them to cough during the course of the examinations, and by this means he protected himself from the patient's expirations.

Dr. Peirovy explained his usual method of holding his stethoscope. Listening on the patient's back, which would typically be exposed through the lifting of clothing to the shoulder level, he held the bell of the stethoscope between his thumb and first two fingers, with his other fingers flexed and, therefore, not in contact with the patient's skin. Listening to the front of the patient's chest, however, Dr. Peirovy's usual practice was to place his hand, holding the stethoscope, underneath the patient's clothes. The presence of overlying clothing restricted the space, such that he held the stethoscope differently, with the bell between his index and middle fingers and his other fingers extended. Auscultating the anterior aspect of a patient's chest Dr. Peirovy would typically listen on two or three locations on each lung, moving the stethoscope from place to place underneath the patient's clothing. For female patients wearing bras, he would place the stethoscope under the bra, directly on the patient's skin. He acknowledged that, as a result, the stethoscope, and his hand, would come in contact with the patient's breast, and possibly with the nipple.

Dr. Peirovy stated that, in the walk-in clinic, he would usually not ask patients to remove any clothing. Although gowns were available in the clinic, he would generally not make use of them. Exceptions would occur if his initial examination detected more serious problems, indicating the need for a more thorough examination or, in the case of a full annual examination when the patient might be requested to disrobe. In this case, a gown would be provided for the patient. Dr. Peirovy explained that his practice in this regard

was both on account of the limited time available in the walk-in setting, and also in the interests of the patient's privacy, as they were not required to undress.

Dr. Peirovy testified also about his routine for examining the heart. He stated that, in auscultating the heart, he focused on the apex area as the best location for auscultating the mitral valve. He stated that the apex is typically located underneath the left breast. In female patients, there would be occasions where the apex was covered by the left breast, which might require him to displace the breast with his hand in order to properly auscultate the apex. With female patients, he would generally ask them to lift their clothing in order to make the apex accessible. His examination of the cardiovascular system would also include auscultating the lungs, particularly the lower lobes.

Dr. Peirovy testified about his recollection of his encounters with the six complainants in these proceedings. He had no independent recollection of Ms. V, Ms. W or Ms. X. He could recall the other three, because in each case something out of the ordinary had occurred which caused him to remember these particular patients. Specifically, he recalled the argument involving Ms. U's boyfriend after he had examined her, the anxiety-related problems of Ms. Y and the difficulty in her examination on account of the malfunctioning of the examination table, and the alleged misunderstanding of Ms. Z which resulted in her breasts being exposed, in addition to his subsequently having asked her out on a date. It is reasonable and believable to the Committee that these occurrences would have stood out in his mind, and caused him to recall something of these particular patients.

Dr. Peirovy had reviewed his records for each of these patients. These records have also been entered into evidence (exhibit 2). Dr. Peirovy testified that, in relation to each of these six complainants, he had examined them in a manner which was consistent with his usual routine. He stated that, in each case, he felt that his examinations were medically indicated and undertaken for a legitimate medical purpose. He denied any sexual interest in any of these patients, and he denied that his touching of them, during the course of his

examinations, had been sexually motivated. Dr. Peirovy was, for the most part, clear and consistent in his testimony.

The Committee observes that, in fact, there is considerable common ground between the accounts of the various complainants and Dr. Peirovy's own recollections of what happened or, in the cases for which he had no recollections, his assumptions about his actions based on his review of the records and his usual routine in examining such patients. Each of the complainants states that Dr. Peirovy touched their breasts during the course of medical examination of their lungs and/or heart; Dr. Peirovy acknowledges that, indeed, he may have done so. Five of the complainants state that Dr. Peirovy placed his hand, holding his stethoscope, underneath their clothes including their bras; Dr. Peirovy confirms that this is his usual practice. Ms. Z states that her breasts were fully exposed while Dr. Peirovy was examining her chest; Dr. Peirovy recalls that this was in fact the case. Ms. Z alleges that Dr. Peirovy asked her out on a date; Dr. Peirovy does not deny having done so, although his testimony on this issue was evasive and somewhat lacking in credibility, as he was reluctant to acknowledge sexual interest on his part. Both Dr. Peirovy and Ms. Z agree that he asked her to sign a note for her chart terminating the doctor/patient relationship.

Dr. Peirovy's evidence with respect to his usual routine in examining patients in the walk-in clinics where he worked was similarly clear and straightforward. His explanation for why he did not require patients to disrobe, as primarily in the interests of time and convenience, was understandable to the Committee. His statements, however, that examinations of this nature also served to protect a female patient's modesty, while the examination itself entailed placing his hand under their clothes and touching their breasts, strikes the Committee as somewhat disingenuous, under the circumstances.

Although points of factual disagreement between the evidence of Dr. Peirovy and that of the complainants are relatively few, they are significant. Dr. Peirovy denies that he cupped the breasts of any of these patients, auscultated directly on the nipple or tweaked the breast of a patient. The complainants each allege that Dr. Peirovy touched their

breasts in a blatantly sexual fashion. Dr. Peirovy denies that he touched them in this way. Dr. Peirovy's defence, essentially, is that his motivation was not sexual, and that he was simply examining these patients in accordance with his usual practice in performing legitimate, clinically-appropriate examinations.

Dr. Peirovy submits that the complainants in this case thought that they had been touched in a sexual fashion when, in fact, they had not. It is submitted that the patients misunderstood what had occurred. It is stated that the possible reasons for this misunderstanding included these patients unfamiliarity with Dr. Peirovy and his method of examination, his lack of adequate communication with them, and the limited time available for the appointments.

Dr. Peirovy argues that his actions as described above were of a clinical nature appropriate to the service provided. Dr. Peirovy's position, more precisely, is that the examination of the lungs of these patients was of an appropriate clinical nature, and that the aspects of the touching which the patients interpreted as sexual were incidental to the proper auscultation of their lungs. Dr. Peirovy does not suggest that there was a clinical necessity for him to have cupped the breasts of any patient with his hands, auscultated directly on the nipple, or tweaked the nipple with his fingers. Rather, Dr. Peirovy denies that he touched each of these patients in the specific fashion in which they allege.

Dr. Peirovy testified that he had been unaware that any of these six patients had been made uncomfortable by his examinations, or that they had been upset or unhappy about any aspect of their encounters with him, at the times when they were seen. In the case of one complainant, Ms. U, she returned to the clinic with her boyfriend within a few minutes of the examination, obviously upset; Dr. Peirovy indicated that he explained to them why he examined her as he had, and he thought that they were satisfied with the explanation. Later, when he learned that she had complained to the College, he indicated in his response to the College that he was "shocked and dismayed" to hear of her complaint. With respect to the other five complainants, Dr. Peirovy stated that his first indication that these patients had been troubled by his actions towards them had been

when he was questioned and charged by the police which was, in most cases, many months later.

FINDINGS

Legal Principles

The onus is on the College to prove the allegations that Dr. Peirovy committed the acts of professional misconduct alleged in the Notice of Hearing. It is alleged that Dr. Peirovy engaged in the sexual abuse of the six complainants and that his conduct with these six complainants was disgraceful, dishonourable, or unprofessional; and, that he has been found guilty of offences relevant to his suitability to practise medicine, namely, two counts of assault in relation to two of the patients in question. The standard of proof is on a balance of probabilities. The College must show that it is more likely than not that the professional misconduct occurred. Proof must be based on evidence that is clear, cogent, and convincing.

The Committee understands that although there are six complainants, the Committee must consider the allegation of each complainant separately.

Sexual abuse of a patient by a member is defined in section 1(3) of the Code as:

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

Section 1(4) of the Code specifies that conduct of a sexual nature does not include touching, behaviour, or remarks “of a clinical nature appropriate to the service provided”.

In order to determine whether Dr. Peirovy’s actions with respect to each complainant constituted sexual abuse, the Committee must first make a factual finding with respect to

the specific fashion in which Dr. Peirovy touched the complainants; then, must determine if the actions in question included touching, behaviour or remarks of a sexual nature. "Sexual nature" does not include touching behaviour or remarks of a clinical nature appropriate to the service provided.

In its deliberations on whether or not Dr. Peirovy's actions were of a sexual nature, the Committee took guidance from the Supreme Court of Canada in the case of *R. v. Chase* [1987], 2 SCR 293. Sexual assault is an assault that is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated. The Court concluded that the test to be applied is an objective one, stating "viewed in light of all the circumstances, is the sexual or carnal context of the assault visible to the reasonable observer". Sexual motivation on the part of the perpetrator is one factor to be considered but the absence of sexual motivation, or in situations where the offender's motivation is unknown, would not preclude a finding that the behaviour in question is sexual in nature. This is exemplified in a criminal case, *R. v. KBV* [1993], 2 SCR 857, where the accused was convicted of sexual assault for grabbing the genitals of his 3-year-old son, despite the obvious absence of sexual motivation.

The Committee must determine whether, viewed objectively, the actions in question were of a sexual nature. The female breast is private and sensitive both physiologically and emotionally. Female patients have a right to expect that physicians will understand and respect their privacy when examinations of this nature are being conducted. A violation of the sexual integrity of a patient, including the deliberate touching of a patient's breast without her consent and for no proper medical reason, constitutes sexual abuse.

The Expert Evidence

Both Dr. A and Dr. B were clear, credible, and reliable witnesses. Both experts had lengthy experience in family practice. Although neither had personal experience working in walk-in clinics, this did not diminish the cogency of their evidence. The Committee finds that both experts were well qualified to provide useful information with respect to the general aspects of heart and lung examinations by family practitioners, and both were

qualified to state their opinions about Dr. Peirovy's examinations of his patients in this context. The multiple exhibits in evidence, consisting of excerpts from various authoritative sources, supported the credibility of the expert testimony.

As distinct from a standard of practice case where expert evidence is required to address a fundamental issue (i.e. what is the standard of practice), the expert evidence in this case can assist the Committee in only one relatively narrow area. The factual findings of the Committee with respect to what actually occurred will rest exclusively on the Committee's determination of the credibility of the accounts of the complainants and Dr. Peirovy, as the only individuals with knowledge of what took place. The Committee must then decide, on the basis of all of the evidence, whether Dr. Peirovy's actions in relation to these patients included touching, behaviour or remarks of a sexual nature. In doing so, the Committee may consider the expert evidence as to whether or not the conduct of Dr. Peirovy in relation to these patients consisted of touching, behaviour, or remarks of a clinical nature appropriate to the service provided.

The Committee found that Dr. B's evidence with respect to the general issue of patient complaints about physicians and the "risk factors" identified in the literature, which appeared to make complaints more likely, to be credible and informative. This evidence, however, was of limited utility. The Committee accepts that most of the identified risk factors are present with respect to the complaints of these six patients. The Committee accepts that Dr. Peirovy's walk-in practice, by its nature, may have been a high risk setting where complaints were more likely to occur than with other physicians practising in other ways. The position of the defence, essentially, is that the complainants misunderstood Dr. Peirovy's actions as sexual in nature, due in part to the presence of risk factors referred to above. The Committee accepts that Dr. Peirovy, in relation to these complainants, was practising in a fashion in which the risks of poor communication and patient misunderstanding were substantial. As will be stated below, however, the Committee finds that the precise and detailed evidence of four of the complainants with respect to how Dr. Peirovy touched their breasts is not consistent with misunderstanding as the explanation for their complaints.

Both medical experts agree that it was clinically reasonable for Dr. Peirovy to have examined each of the complainants, in light of their presenting problems and their respective histories. The Committee agrees. The expert evidence heard by the Committee also confirms that, in the course of a legitimate and clinically appropriate examination, inadvertent/incidental contact between the hand and/or stethoscope of the examining physician, and the patient's breast, including the nipple area, may occur. Neither expert, however, offered the opinion that there was a clinical necessity for Dr. Peirovy to have placed his stethoscope directly on the nipple of a patient, tweak the nipples of one complainant, or cup of the breasts of two complainants with his hand.

Ms U

The Committee finds that Ms. U was a credible witness. Her evidence was clear and consistent. Although she acknowledged that she could not recall some minor details of her examination by Dr. Peirovy, this is to be expected given the passage of time, and the peripheral nature of the details in question.

As previously indicated, Dr. Peirovy had some independent recollection of this patient. Dr. Peirovy denied that he touched this patient for any sexual or non-medical purpose.

The Committee accepted Ms. U's testimony as reliable and concludes that she was touched by Dr. Peirovy in the manner in which she has described. Specifically, the Committee finds that Dr. Peirovy placed his stethoscope directly on her nipples and cupped her breasts with his hand. The Committee finds that Dr. Peirovy did not have consent to touch his patient in this manner and that there was no clinical reason to examine Ms. U in this way. The cupping of her breasts with his hand and the placing of the stethoscope directly on her nipples are actions which, to the objective observer, would be construed as sexual in nature. Regardless of Dr. Peirovy's motivation, this deliberate touching of the nipples and breasts during a chest examination was a violation of Ms. U's sexual integrity and constitutes sexual abuse.

The Committee also finds that the sexual abuse of this patient is conduct which would reasonably be regarded by members as disgraceful, dishonourable, and unprofessional.

Ms V

Counsel for Dr. Peirovy challenged Ms. V's evidence by pointing out that, initially, her recollection of the date of her examination by Dr. Peirovy had been inaccurate, by identifying several inconsistencies in her testimony before the Committee as compared to her earlier accounts to the police and at the preliminary inquiry in relation to Dr. Peirovy's criminal charges, and by suggesting dishonesty in the way that she had completed a Criminal Injuries Compensation Board application, and in respect to an earlier apparent termination by an employer for alleged theft. The Committee agrees that there were inconsistencies in Ms. V's evidence.

Ms V's testimony before the Committee, for example, was that Dr. Peirovy, while he was examining her, gave her no instructions whatsoever. Earlier, when questioned by the police, she had stated that she could not recall whether Dr. Peirovy had given her any instructions or not. It is clear also that Ms. V had initially believed that her appointment with Dr. Peirovy had been in April 2010 but, after she had seen a copy of the medical record, she now knows that it had been in November 2009.

The Committee is of the view that inconsistencies and inaccuracies of this nature are not uncommon in these sorts of circumstances and are in fact to be expected giving the passage of time, the frailties of memory, and the stressful conditions under which complainants are questioned.

With respect to counsel for Dr. Peirovy's suggestions that her completion of the Criminal Injuries Compensation Board application, and her apparent earlier termination of employment for theft, reveal her to be dishonest, and that therefore her evidence should not be believed, we do not make this inference. Ms. V's cross-examination suggests that she does not fully understand the workings of the criminal justice system. In cross-examination she was defensive and attempted to deflect personal responsibility for the

contents of the form, for example, by stating that someone else had filled out parts of it, and that she had not read through it before signing it. We are not prepared, however, to infer deliberate dishonesty in her completion of the Criminal Injuries Compensation Board application.

Dr. Peirovy had no independent recollection of Ms. V. He acknowledged during his testimony that it was possible, in conducting his routine examination, that his fingers made contact with the nipple area of her breast. He denied that he touched this patient for any sexual or non-medical purpose.

With respect to the central aspects of her evidence being the manner in which she was examined, the Committee finds that Ms. V's account was credible and reliable. Her recollection of the touching of her breasts by Dr. Peirovy was clear. The Committee finds that she was touched by Dr. Peirovy in the manner in which she describes. In particular, the Committee finds that Dr. Peirovy placed his stethoscope directly on her nipples during the course of his examination. The Committee finds that Dr. Peirovy did not have consent to touch his patient in this manner and that there was no clinical reason to examine Ms. V in this way. The placing of the stethoscope directly on her nipples would, to the objective observer, be construed as sexual in nature. Regardless of Dr. Peirovy's motivation, this deliberate touching of her nipples during a chest examination was a violation of Ms. V sexual integrity and constitutes sexual abuse.

The Committee also finds that the sexual abuse of this patient is conduct which would reasonably be regarded by members as disgraceful, dishonourable, and unprofessional.

Ms W

The Committee finds that Ms. W was a credible and reliable witness. Her recollection with respect to how Dr. Peirovy had touched her breasts was clear. There were no significant inconsistencies between her evidence before the Committee and her previous statement to the police. She acknowledged that she was initially uncertain whether the touching was inappropriate, but that she had since concluded that it was. In the view of

the Committee, such initial uncertainty about what had happened, and the significance of this, is entirely understandable under the circumstances.

Dr. Peirovy had no independent recollection of Ms. W, but denied that he touched her for any sexual or non-medical purpose.

The Committee finds that Ms. W was touched by Dr. Peirovy in the manner which she has described. In particular, the Committee finds that Dr. Peirovy touched her nipples with his fingers during the course of his examination. The Committee finds that Dr. Peirovy did not have consent to touch his patient in this manner and that there was no clinical reason to examine Ms. W in this way. The touching of her nipples, to the objective observer, would be construed as sexual in nature. Regardless of Dr. Peirovy's motivation, the deliberate touching of her nipples during a chest examination was a violation of Ms. W's sexual integrity and constitutes sexual abuse.

The Committee also finds that the sexual abuse of this patient is conduct which would reasonably be regarded by members as disgraceful, dishonourable, and unprofessional.

Ms X

The Committee finds that Ms. X was a credible and reliable witness. Her description of the fashion in which Dr. Peirovy "tweaked" her nipple was detailed and precise. Her recollection of these events was clear. Minor inconsistencies, on peripheral issues, between Ms. X's testimony before this Committee and her earlier evidence at the preliminary inquiry, and her earlier statement to the police, are of no consequence.

Dr. Peirovy had no independent recollection of Ms. X. He denied that he touched Ms. X for any sexual or non-medical purpose.

The Committee accepts Ms. X's evidence as reliable. In particular, the Committee finds that during the course of his examination Dr. Peirovy cupped her breasts and used his fingers to put pressure on her nipples, which she described as "tweaking". The

Committee finds that Dr. Peirovy did not have consent to touch his patient in this manner and that there was no clinical reason to examine Ms. X in this way. The cupping of her breasts with his hand and "tweaking" of her nipples are actions which, to the objective observer, would be construed as sexual in nature. Regardless of Dr. Peirovy's motivation, the deliberate touching of her breasts and nipples during a chest examination was a violation of Ms. X's sexual integrity and constitutes sexual abuse.

The Committee also finds that the sexual abuse of this patient is conduct which would reasonably be regarded by members as disgraceful, dishonourable, and unprofessional.

Ms Y

The Committee found a certain lack of clarity in some aspects of Ms. Y's evidence. She did recall that Dr. Peirovy had placed his hand under her shirt and bra, but the context of his actions, in terms of the nature of the examination which Dr. Peirovy was conducting, is less clear. Although she did testify that Dr. Peirovy cupped her breast she described the touching of her nipple as a "graze". With respect to why she reattended, subsequent to the touching in question, she states that in retrospect she had been too trusting. She appears, however, to have arrived at this explanation only subsequently, after she had been exposed to media reports which caused her to believe that she had been touched in a sexual fashion by Dr. Peirovy. Her conclusion in this regard, also, seems to have been partially as a result of vague feelings of unease at Dr. Peirovy's demeanour on her third appointment with him. While the Committee accepts that Ms. Y's testimony was sincere, there are reasons to doubt the reliability of her retrospective account, as her subjective impressions appear to have been influenced by the fact reports were made by others.

Dr. Peirovy stated that he had some independent recollection of his involvement with this patient. This was because her complaint was primarily of anxiety and stress, because he saw her on three separate occasions, and on account of an unusual problem in setting up the examination table which caused him to remember the patient. He noted that a female nurse had been present throughout all three of his appointments with this patient, and that he had been "shocked" when he was contacted by the police a few days after her last

visit. With respect to his response to Ms. Y's specific complaint, Dr. Peirovy repeated that his examination of her had been medically indicated, and that he had not touched her for any sexual or non-medical purpose.

The Committee finds that the allegations of professional misconduct with respect to Ms. Y have not been proven.

Despite testifying that she had misgivings with respect to how Dr. Peirovy had examined her on the occasion of her second appointment, Ms. Y saw him for a third time just a few days later. She had telephoned the clinic in advance in order to ensure that she could. The Committee draws the inference that Ms. Y was not overly concerned about what had occurred at the second appointment at the time she booked her third appointment. The Committee is aware that victims of abuse can react quite differently to the abusive experience, and that many victims will return to their abusers or fail to report their abusers immediately. The fact that Ms. Y returned to see Dr. Peirovy a third time does not prove that she was not subjected to sexual touching on the second visit. These particular circumstances, however, do raise questions about the reliability of her account of the second visit as the Committee is concerned that her account has been somewhat tainted by the fact that she subsequently learned of other complaints.

Dr. Peirovy was accompanied by a female nurse at all times during the course of his encounters with Ms. Y. While surreptitious sexual touching could still have occurred in the presence of the chaperone, the circumstances do tend to support Dr. Peirovy's evidence that he was simply examining Ms. Y in accordance with his usual routine.

There is no dispute that an examination of Ms. Y's heart and lungs was clinically indicated; both experts agree on this point. Ms. Y referred to a grazing of her nipple, suggesting that the touching in question was more likely to have been inadvertent.

The Committee finds that the evidence with respect to Ms. Y's allegations does not meet the requisite standard to make a finding of either sexual abuse or disgraceful, dishonourable, or unprofessional conduct and therefore these allegations are not proven.

Ms Z

The Committee finds that Ms. Z was a credible witness, and accepts that her evidence is reliable. She was clear in her recollection of the general aspects of what had occurred; there was some lack of clarity with respect to precisely where on her left chest Dr. Peirovy had placed his stethoscope, but it would not be expected of her to be able to state the precise placement of the stethoscope under the circumstances. Ms. Z did clearly recall that Dr. Peirovy's hand had made contact with the outer aspect of her left breast, pushing it to the side. With respect to her subsequent conversation with Dr. Peirovy, which culminated in him asking her out on a date and instructing her to sign a note for the chart terminating the doctor/patient relationship, Ms. Z's evidence was clear, consistent, and credible.

Dr. Peirovy had some independent recollection of his appointment with Ms. Z. He recalled her because she had been referred to him by a colleague, and also on account of what he termed a misunderstanding on Ms. Z's part regarding his instructions to lift up her clothes so that he could examine her chest. Dr. Peirovy stated that he had asked Ms. Z to lift up her clothes but he stated that, after he had turned away for a few seconds, he was surprised to see that she had undone her bra, leaving her breasts fully exposed. Dr. Peirovy stated that he decided to proceed with his examination rather than to call attention to her state of undress. He continued with his examination of her heart and lungs. He recalled that he had to move her left breast with his hand in order to auscultate the apex.

Dr. Peirovy recalled also his conversation with Ms. Z after the conclusion of the examination. He acknowledged that he had found her interesting, that he thought it was possible he could establish a social relationship with her, and that he had initiated this dialogue with her. His recollection was that Ms. Z was receptive to his suggestion. Dr.

Peirovy did not admit that he was sexually attracted to Ms. Z, or that his intentions were primarily sexually motivated in suggesting to her that they could see each other outside the office setting. He did acknowledge that a future sexual relationship might have been a possibility, but stated that he was not thinking in those terms at the time. Dr. Peirovy recalled that he informed Ms. Z that she could not continue to be his patient if they were going to see each other socially. He acknowledged that he had her write a note for her chart terminating the doctor/patient relationship. He stated that, sometime later, he had second thoughts about the advisability of this, and decided not to call her. He removed the note from Ms. Z's chart at that time because, according to Dr. Peirovy, having decided not to pursue a relationship with her, he felt that the note was not necessary. Dr. Peirovy confirmed that, in fact, he did not make subsequent contact with Ms. Z, and that he had not seen her again as a patient. Dr. Peirovy stated that he did not touch Ms. Z for a sexual or non-medical purpose.

Ms Z's presenting problems were cardiac in nature, palpitations and episodes of dizziness. Dr. Peirovy made the clinical decision to examine her heart. The only significant point of disagreement between Dr. Peirovy and Ms. Z pertains to his instructions to her in preparation for the examination. Dr. Peirovy stated that he asked her to lift up her clothes as she was lying supine on the examination table; Ms. Z stated that he asked her to undo her bra and lift it up, thus fully exposing her breasts. With respect to the other aspects of the examination, Dr. Peirovy and Ms. Z are basically in agreement. Dr. Peirovy touched Ms. Z's left breast with his hand, exerting pressure on the lateral aspect of the breast while he was auscultating the apex area, which is below and lateral to the left breast. Neither Ms. Z's left nipple, nor any part of her right breast were touched by Dr. Peirovy.

It is not possible for the Committee to determine, based on the evidence, the exact words Dr. Peirovy used in instructing Ms. Z to disrobe prior to examining her. Ms. Z understood that she had been asked to undo her bra and expose her breasts; Dr. Peirovy indicated that he had not asked her to do this, and that she must have misunderstood. The Committee finds that both Ms. Z and Dr. Peirovy were reasonably credible with respect to this issue.

It was, however, Dr. Peirovy's responsibility as the physician to take steps to ensure effective communication. This would be particularly the case with respect to a sensitive examination of this nature. He had a responsibility also to ensure that his patient understood and consented to the examination. He did not discharge this responsibility effectively, and miscommunication appears to have occurred on account of his failure in this regard. Further, when Dr. Peirovy realized that Ms. Z's breasts were fully exposed, his decision to proceed with the examination without offering her privacy, by way of a gown for example, was a serious lapse of judgment. Regardless of time constraints or other issues, Dr. Peirovy should have recognized the vulnerable and compromised situation of Ms. Z, and responded in a more professional manner by assisting in preserving her modesty. His conduct in this regard, the Committee finds, was unprofessional.

With respect to the examination of Ms. Z, it is common ground that he touched her left breast with one of his hands. The Committee finds, however, that it has not been proven that this touching was not of a clinical nature appropriate to the service provided. It is reasonable to conclude that proper auscultation of the apex required Ms. Z's breast to be displaced. There was no suggestion that her nipple was touched. This touching lacks a clear sexual character as distinct from the four patients whose breasts and nipples were touched underneath their bras. As will be discussed below, the similar fact evidence in relation to these patients was not available as supporting evidence with respect to Ms. Z's allegations. The Committee finds the allegation that Dr. Peirovy sexually abused Ms. Z by touching her breast in a sexual manner during this examination was not proven.

Following his examination of her, Dr. Peirovy engaged Ms. Z in conversation which culminated in asking her out on a date. He told her that she would have to sign a note for her chart terminating the doctor/patient relationship, if they were to see each other outside the office. She did so; it was Dr. Peirovy's evidence that she was "interested". Ms. Z, in contrast, states that she was very uncomfortable at the totality of her interactions with Dr. Peirovy. She was more than happy to terminate the doctor/patient relationship as she did not want to see him again, and she simply wanted the appointment to end.

Dr. Peirovy demonstrated egregiously poor judgment in suggesting to Ms. Z that they could see each other socially, in the context of just having compromised her privacy on account of the ill-advised fashion in which he had examined her. Dr. Peirovy appears to have been completely oblivious with respect to the real meaning of boundaries in a 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. He knew that doctors are not permitted to date their patients, but he appeared to believe that boundaries would be dissolved by simply terminating the doctor/patient relationship in writing. He completely misunderstood Ms. Z's willingness to sign a note to that affect as indicating her interest in him as a prospective social or sexual partner.

The Committee finds that Dr. Peirovy's conduct with respect to this issue was clearly disgraceful, dishonourable, or unprofessional. The Committee also finds, however, that it does not amount to sexual abuse. There was no conversation or proposition of a sexual nature. What Dr. Peirovy was proposing was the possibility that he and Ms. Z could see each other socially in the future, admitting that he found her interesting and attractive. He acknowledged that, if he had established a relationship with her, sexual activity might have occurred at some point. He did not follow through with his stated intention to call Ms. Z. There was, in fact, no further contact between the two. The Committee observes that many initial social encounters, even if one had occurred in this case, do not progress to sexual relationships. The Committee is not persuaded that Dr. Peirovy's tentative overtures towards Ms. Z amounted to behaviour or remarks of a sexual nature.

The Committee finds that Dr. Peirovy's conduct in relation to Ms. Z was disgraceful, dishonourable, or unprofessional, but that the College has not proven that he sexually abused her.

THE SIMILAR FACT EVIDENCE

The College's position is that the evidence with respect to each of the six complainants can be used in order to support the evidence of the others, in order to assist the Committee in deciding whether the allegations contained in the Notice of Hearing have been proven. The College submits that the use of the evidence in this way is consistent with the acceptable use of similar fact evidence. The defence's position is that the evidence should not be used in this way.

Similar fact evidence (or evidence of other discreditable conduct) is presumptively inadmissible. Evidence of bad character cannot be adduced simply to show that the doctor is the type of person likely to commit the acts as alleged. In certain limited circumstances, however, Courts will admit similar fact evidence if the probative value of the evidence exceeds the prejudicial effect normally associated with such evidence.

In *R. v. Handy* (2002), 2 S.C.R. 908, the Supreme Court of Canada set out the legal framework to be followed in the consideration of the admissibility of proposed similar fact evidence. As stated by the Court,

> *"The general exclusionary rule that similar fact evidence is presumptively inadmissible has been affirmed repeatedly and recognizes that the potential for prejudice, distraction and time consumption associated with the evidence generally outweighs its probative value. Issues may arise, however, for which its probative value outweighs the potential for misuse. Similar circumstances may defy coincidence or other innocent explanation. As the evidence becomes more focused and specific to the charge, its probative value becomes more cogent. The onus is on the prosecution to show on a balance of probabilities that the probative value of the similar fact evidence outweighs its potential for prejudice."*

The onus is on the College to show that, on a balance of probabilities, in the particular circumstances of this case, the probative value of the proposed similar fact evidence in relation to an issue before the Committee outweighs its prejudicial effect.

The probative value of the proposed evidence, in general, will rest on its degree of connectedness to the evidence pertaining to the other allegations in the Notice of Hearing. The various factors which can be used by the Committee, in assessing the degree of connectedness between the proposed similar fact evidence and the evidence of the other complainants, have been outlined by the Supreme Court of Canada in the *Handy* case. The factors which the Committee can consider in this regard include:

1. the proximity in time of the similar acts;
2. the extent to which the other acts are similar in detail to the charged conduct;
3. the number of circumstances of the similar acts;
4. the circumstances surrounding or relating to the similar acts;
5. any distinctive feature(s) unifying the incidents; and,
6. any intervening events

The Committee was guided by these factors in its analysis of the issue.

The Committee finds that the allegations of four of the complainants in this case, namely Ms. U, Ms. V, Ms. W, and Ms. X, are strikingly similar. These were all young women who were examined by Dr. Peirovy on one occasion only at walk-in clinics. The examinations occurred in close temporal proximity, within roughly twelve months in 2009-2010. All of these complainants had presented with relatively minor respiratory complaints. Dr. Peirovy examined each of them in a very similar fashion, which included an examination of the lungs by auscultation of the anterior chest. In each case, the patient had remained fully clothed. Each had been asked to lie supine on the examination table, and to turn her head towards the left, facing the wall. Dr. Peirovy then proceeded to insert his hand, holding his stethoscope, underneath the clothes of these patients including under their bras. He placed his hand, holding the stethoscope, on the breasts of the

complainants. There was some variation in the descriptions of these four patients with respect to the exact way in which their breasts were touched; all, however, indicated contact between Dr. Peirovy's fingers and/or his stethoscope, and their nipples. Two of the complainants stated that Dr. Peirovy had cupped their breast with his hand; one indicated that Dr. Peirovy had "tweaked" her nipples, meaning that he had squeezed the nipple between two of his fingers. All complainants stated that they thought immediately that they had been touched inappropriately.

The Committee finds that this pattern demonstrates a very high degree of connectedness between these four sets of allegations. They all stated that their breasts and nipples had been touched in a very similar fashion. Such evidence is probative of a central issue, namely whether the touching in question was of a sexual nature, and to rebut Dr. Peirovy's defence that the nature of the touching was inadvertent and simply misunderstood by the complainants.

The probative value of this evidence outweighs any prejudice to Dr. Peirovy. It is not being used to support the proposition that Dr. Peirovy is a person of bad moral character, or that he is generally inclined to discreditable conduct. Rather, it is being used to support the allegation that Dr. Peirovy, by the way in which he touched these four young female patients during the course of a chest examination, subjected them to touching of a sexual nature.

There is no suggestion of collusion amongst any of these four complainants, such as would diminish the strength of their evidence. All testified that they did not know, and had never spoken to, each other. All were unaware of the specifics of any of the other allegations against Dr. Peirovy.

As indicated above, the Committee is of the view that the evidence is sufficient to support a finding of sexual abuse and disgraceful, dishonourable and unprofessional conduct with respect to each of these patients without the use of similar fact evidence. The Committee finds, however, that the evidence of each of these four complainants should be admitted

as similar fact evidence with respect to the allegations of each of them to rebut Dr. Peirovy's defence that the nature of the touching was inadvertent or simply misunderstood by the complainants, and to support the conclusion that each was touched in the manner in which she described.

The Committee finds that the evidence of the remaining two complainants, Ms. Y and Ms. Z, is dissimilar in important respects to the evidence of the others and should not be admitted as similar fact evidence to support the allegations of the other four. Further, the evidence of Ms. U, Ms. V, Ms. W, and Ms. X should not be admitted as similar fact evidence to support the allegations of Ms. Z or Ms. Y.

The Committee finds that the evidence of Ms. Y regarding Dr. Peirovy's conduct while examining her is dissimilar in important respects to the evidence of the previous four complainants. The Committee finds that the dissimilarities are sufficiently prominent so as to outweigh the similarities. The probative value of the evidence of the first four complainants, with respect to Ms. Y's evidence, is therefore lessened. For this reason the Committee finds that it cannot use the evidence of the first four complainants to support Ms. Y's allegations.

With respect to the evidence of Ms. Z, the Committee also finds that there are significant dissimilarities as compared to the evidence of the first four complainants, which distinguish her case from the others. Ms. Z had been referred to Dr. Peirovy by a colleague on account of possible cardiac problems. Dr. Peirovy's examination of her was different in important respects from the way he had examined the first four complainants. Dr. Peirovy did not exam Ms. Z under her clothes, as he had in the other cases. Ms. Z understood that Dr. Peirovy instructed her to undo her bra and expose her breasts, which she did. She alleges that Dr. Peirovy touched her left breast with his hand in the course of auscultating the apex of her heart. The touching, however, is described as different in character to that which is alleged by the first four complainants. Ms. Z states that Dr. Peirovy exerted pressure on the side of her breast, but it is not alleged that he placed his stethoscope on the breast or that he touched her nipple with his fingers or his stethoscope.

For these reasons the Committee finds that, as with Ms. Y, the evidence of the first four complainants cannot be used to support the evidence of Ms. Z. There are important dissimilarities between the nature of the alleged touching, and the context in which this occurred, with respect to Ms. Z as distinct from the first four complainants. This is sufficient to diminish the probative value of the evidence in the first four cases, with respect to Ms. Z's allegations, to the point where it does not outweigh the prejudicial effect to Dr. Peirovy.

In summary, the Committee accepts the position of the College that the evidence of the first four complainants (Ms U, Ms. V, Ms. W, and Ms. X) can be used, in each case, to support the evidence of the other three. The Committee concludes that this is consistent with the permissible use of similar fact evidence.

OFFENCES RELEVANT TO DR. PEIROVY'S SUITABILITY TO PRACTISE

The Committee finds the allegation that Dr. Peirovy has been found guilty of offences relevant to his suitability to practise is proven.

The findings of guilt were in relation to assault on Ms. U and Ms. W. The Committee accepts the evidence contained in the Criminal Finding of Guilt Brief (exhibit 10) as establishing this. The Court imposed a conditional discharge and eighteen months probation, with conditions including that Dr. Peirovy attend counselling with Dr. D, perform community service, make a charitable donation, and have no contact with the six complainants in these proceedings.

There is no dispute between the parties regarding the fact that Dr. Peirovy has been found guilty of two counts of assault, as indicated above. Counsel for Dr. Peirovy argues that, in the circumstances of this case, the offences are not relevant to his suitability to practise. It is submitted that the findings of guilt for simple assault were premised on a technical breach of the *Criminal Code* related to Dr. Peirovy's failure to obtain specific consent from his patients to place his stethoscope on or near the patients' nipples, in the context

of an otherwise appropriate and clinically indicated physical examination. In essence, counsel for Dr. Peirovy argues the findings of guilt arise on account of a technicality and, because Dr. Peirovy's actions were blameless in all other respects, this should not be relevant to his suitability to practise.

The Committee does not accept this submission. The Committee finds that the manner in which Dr. Peirovy touched his young female patients during examination is entirely relevant to his suitability to practise. The absence of patient consent to this touching, during these particularly sensitive physical examinations, cannot be dismissed as a mere technicality. The Court has found that one aspect of Dr. Peirovy's examination of these patients amounted to a criminal assault. It is in fact difficult for the Committee to imagine a clearer example of an offence relevant to a physician's suitability to practise than a finding, as in this case, that he has assaulted his patients in his office during the course of a medical examination.

For these reasons, the Committee finds the allegation that Dr. Peirovy is guilty of offences relevant to his suitability to practise is proven.

PENALTY AND REASONS FOR PENALTY

The Discipline Committee (the "Committee") of the College of Physicians and Surgeons of Ontario delivered its written decision and reasons for decision on finding in this matter on July 17, 2015, and found that Dr. Peirovy has committed acts of professional misconduct in that he engaged in the sexual abuse of patients; he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and, he has been found guilty of an offence that is relevant to his suitability to practise.

The Committee heard evidence and submissions on penalty and costs on October 26 and October 30, 2015, and reserved its decision.

EVIDENCE AND SUBMISSIONS ON PENALTY AND COSTS

Counsel for the College submitted that Dr. Peirovy's certificate of registration should be revoked. The College also sought an order that he be reprimanded, that he reimburse the College for funding for counselling provided to patients, that he post security to satisfy these obligations, and that he pay the costs of the hearing.

Counsel for Dr. Peirovy submitted that revocation of Dr. Peirovy's certificate of registration was not warranted. Defence counsel instead sought a composite penalty consisting of suspension of Dr. Peirovy's certificate of registration for four months, a public reprimand, and conditions on Dr. Peirovy's certificate of registration including that he continue to have his interactions with female patients supervised by a female chaperone for at least one year; that he continue his work with Dr. D on issues of consent, boundaries, and doctor/patient communication; that he have his technique of chest examination reviewed and assessed by a family physician selected by Dr. D; and that he participate in individual psychotherapy as required.

Dr. Peirovy also agreed with the College's request that he reimburse the College for funding for patients' therapy and for the costs of the hearing. In determining the suitable penalty, the Committee considered the findings in its Decision and Reasons for Decision in this matter dated July 17, 2015.

Dr. Peirovy's counsel called further evidence consisting of testimony of Dr. M, a forensic psychiatrist with expertise in the assessment and treatment of sexual offenders and in risk assessment; and of Dr. D, who specializes in assisting physicians with boundary awareness and communication with patients. Dr. Peirovy also entered a number of letters into evidence which might be described as character references.

Counsel for the College entered impact statements prepared by the complainants in this case.

The Committee carefully considered the totality of the evidence and the submissions of counsel. The Committee also reviewed a number of prior cases submitted by counsel pertaining to past Discipline Committee decisions in which the facts bore varying degrees of similarity to Dr. Peirovy's case.

DECISION ON PENALTY

For the reasons that follow, the Committee found that revocation of Dr. Peirovy's certificate of registration is not warranted. The Committee ordered that Dr. Peirovy's certificate of registration be suspended for six months, that he appear before the Committee to be reprimanded, and that his certificate of registration be subject to a number of conditions as will be elaborated upon below.

REASONS FOR DECISION ON PENALTY

The principles relevant to the imposition of penalty in disciplinary proceedings are well-established. The protection of the public is the paramount consideration. Others include maintenance of public confidence in the reputation and integrity of the profession and in the principle of effective self-governance; general deterrence as it applies to the membership as a whole; specific deterrence as it applies to the member; and the potential for the member's rehabilitation.

The weighing of these principles, in light of the specific facts and circumstances of the case, is the task to be undertaken by the Committee in arriving at an appropriate penalty. Aggravating and mitigating factors, if any, pertaining to the misconduct in question will be considered. Proportionality is an important element to be considered by the Committee.

The Committee found that Dr. Peirovy committed professional misconduct in that he sexually abused four patients and, in relation to a fifth patient, he engaged in conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. The specific facts and circumstances are outlined in detail in the Committee's Decision and Reasons for Decision dated July 17, 2015.

The Committee was extremely concerned by the actions of Dr. Peirovy that led to the professional misconduct findings He sexually abused four young female patients within a matter of months. His problematic conduct continued even after he knew that one of his patients had complained to the authorities about his behaviour. All four patients were traumatized, as indicated in their impact statements filed as evidence. With respect to the fifth complainant, Dr. Peirovy's conduct demonstrated egregiously poor judgment; it is apparent that he was almost totally unaware of the true meaning of doctor/patient boundaries. Overall, Dr. Peirovy demonstrated a pattern of behaviour over a period of time which was causing harm to the public.

The evidence of Dr. M was helpful to the Committee at arriving at a suitable penalty. Dr. M is a well-qualified expert in forensic psychiatry. He is a specialist in sexual behaviours as well as mental health issues, and, as such, is experienced in the assessment and treatment of sexual offenders. He is an expert in the assessment of the risk of re-offence.

Dr. M had assessed Dr. Peirovy at the request of his counsel. The Committee carefully considered Dr. M's testimony and his written report to the College (exhibit 29).

In Dr. M's opinion, Dr. Peirovy is in general free of significant mental health issues and does not suffer from a major mental illness. He does not show evidence of personality pathology, a personality disorder, or maladaptive personality traits. Significantly, there is no evidence of psychopathy or antisocial tendencies. Neither is there evidence of sexual deviance, or of a disorder of sexual preference.

Dr. M found that Dr. Peirovy has been prone to anxiety and to some depressive symptoms at times; he has had difficulties coping with stress and with loss. He has been treated intermittently with antidepressant and anxiolytic medications and with psychotherapy.

Dr. M was of the opinion that Dr. Peirovy's risk of re-offending by committing further sexual transgressions in the future was low. Dr. M evaluated Dr. Peirovy with a number of standard actuarial risk assessment tools, which all indicated a low risk of re-offence. Clinical and dynamic factors also indicate a favourable prognosis.

Dr. M found that Dr. Peirovy had a supportive network of family and friends, he had a stable work history prior to the events which brought him before the College, and his overall orientation was prosocial. Dr. M further noted that Dr. Peirovy had worked hard to understand his inappropriate behaviour. He had sought out the professional help of Dr. D, and he had worked diligently with her for some time. Dr. M was of the opinion that Dr. Peirovy was very embarrassed and ashamed at what he had done, and that he was sincere in his desire that this not happen again. These factors all suggest a favourable prognosis.

Dr. D's evidence was similarly favourable with respect to Dr. Peirovy. The Committee heard her testimony and considered her written report (exhibit 31). Dr. D is an expert in assessing and treating physicians who have difficulties in communication, interviewing skills, professionalism, boundary issues, consent issues and, in general, the multitude of problems which physicians can encounter in establishing and maintaining professional doctor/patient relationships. Dr. Peirovy had been referred to Dr. D by his legal counsel in August 2013 for assessment and remediation. She had continued to work with him in a therapeutic role until their last session in June 2015. Dr. D was proposing to continue her work with Dr. Peirovy following the conclusion of the College proceedings.

Dr. D's assessment of Dr. Peirovy indicated that, in her opinion, he had deficits in a number of areas. These included his interviewing skills, his manner (which was described

as awkward and clumsy), his verbal communication, his awareness of issues pertaining to patient consent, his sensitivity to how his patients were perceiving him, and how his behaviour was affecting his patients. Dr. D stated that Dr. Peirovy was largely unaware of his professional responsibilities in maintaining appropriate boundaries in the doctor/patient relationship.

In her work with him, Dr. D indicated that Dr. Peirovy had made good progress. He was very engaged and committed to the process. His understanding of the areas in which he was deficient had improved; Dr. D stated her opinion that there had been "huge professional maturation." Dr. D stated that she was recommending that Dr. Peirovy continue his work with her; there was more work yet to be done, particularly around Dr. Peirovy's communication skills. She expected that their work might continue for another six to twelve months.

Dr. D also recommended that Dr. Peirovy should have the opportunity to have his technique of chest examinations observed by a physician colleague who would be able to provide him with feedback. She indicated her view that he appeared not to have had much feedback of this nature during his training.

College counsel submitted that the expert evidence had limitations. Specifically, he noted that Dr. Peirovy's explanation of his sexual misconduct to Dr. M still seemed to demonstrate a lack of insight. For example, Dr. Peirovy had told Dr. M that he was simply conducting normal chest examinations and that his patients misunderstood his actions as sexual in nature. He denied sexual motivation or intent. He attributed the multiple complaints, in part, to the publicity which had been generated from his criminal charges. College counsel noted that the Committee had found that Dr. Peirovy's conduct with the four complainants who he had sexually abused to have been deliberate, and not the result of miscommunication or poor patient understanding. College counsel submitted that, despite Dr. M's assessment, there remained no clear explanation for why Dr. Peirovy acted as he did, and that the weight which should be given to Dr. M's evidence should be diminished as a result.

Counsel for the College, while acknowledging Dr. Peirovy's progress, submitted that Dr. D's work with Dr. Peirovy was largely irrelevant for the purposes of the Committee. It appeared to focus on issues in the doctor/patient relationship, which were not central to the Committee's findings that Dr. Peirovy had deliberately sexually abused his patients.

The Committee carefully considered the multiple previous decisions of the Discipline Committee submitted by counsel for both parties in cases involving the sexual abuse of patients by physicians. The Committee is aware that it is not bound by previous decisions. Each case is unique. As a general principle, however, similar factual situations would usually be expected to attract similar penalties.

Because of the nature of the professional misconduct committed by Dr. Peirovy, revocation of his certificate of registration is not mandatory. Revocation is, however, one of the options available to the Committee, depending on its balancing of the principles of penalty in relation to the unique circumstances of the case. The Committee reviewed previous cases in which the penalties ranged from revocation to suspensions of various lengths, usually with conditions tailored to the circumstances of the case.

In *CPSO v. Le (2010)*, for example, the Committee found that Dr. Le had committed professional misconduct by conducting inappropriate rectal examinations with two female patients with neither adequate explanation to the patients nor their consent. The patients were left feeling violated and confused. Although the finding of the Committee was one of disgraceful, dishonourable or unprofessional conduct and not sexual abuse (the allegation of sexual abuse had been withdrawn), the facts are somewhat analogous to Dr. Peirovy's case. The Committee in *Le* imposed a two month suspension of his certificate of registration, with multiple conditions.

The case of *CPSO v. Marks (2012)* involved a physician who sexually abused three female patients in the course of psychotherapeutic relationships by hugging and kissing them during their appointments. These patients were vulnerable and there was a clear

power imbalance. Dr. Marks' certificate of registration was suspended for four months, and multiple conditions were attached.

In *CPSO v. Li (1996)*, the Committee's finding was that Dr. Li had failed to meet the standard of care in relation to several incidents of inappropriate breast examinations on three different patients. Despite the sexual aspect to Dr. Li's actions, the Committee made a finding of medical sloppiness rather than sexual impropriety. Dr. Li's certificate of registration was suspended for three months, with conditions.

Other cases reviewed involved more florid and overtly sexual behaviour on the part of the physician, ranging from touching which was clearly and blatantly sexual in nature, to sexual assault.

In *CPSO v. Maharajh (2013)*, the physician admitted to sexual abuse and to disgraceful, dishonourable, or unprofessional conduct. The misconduct in question included placing his lips on the nipple of a female patient during a chest examination, and placing his mouth or cheek on the breasts of ten to 12 other patients over a seven year period. Despite his admission, the Committee found that Dr. Maharajh had failed to take full responsibility for his behaviour. Ongoing psychotherapy was seen as important and this was ordered by the Committee, in addition to a condition that Dr. Maharajh see male patients only. The Committee also ordered that Dr. Maharajh's certificate of registration be suspended for eight months.

The case of *CPSO v. Rakem* involved egregious conduct on the part of the physician whereby he touched the complainant, an 18-year-old female student, in a blatantly sexual fashion over an extended period of time under the guise of an "anatomy lesson." Dr. Rakem's certificate of registration was suspended for six months, and conditions were imposed which included that a female chaperone be present during all of his examinations and consultations with female patients.

In *CPSO v. Lee (2010)*, the physician had made "licking sounds" during a vaginal examination of a patient, had placed his mouth on her exposed breast, and had made blatantly sexual comments to her during the course of his examination. Dr. Lee's certificate of registration was suspended for six months, he was required to take remediation courses, and was required to have a chaperone present during all in-person encounters with female patients.

In the case of *CPSO v. Sharma (2004)*, the member's conduct with female patients was obviously sexual and included improper breast and vaginal examinations. The Committee ordered a six month suspension of Dr. Sharma's certificate of registration, the presence of a female chaperone during all examinations of female patients, and the completion of a boundaries course.

The Committee also considered cases where revocation was ordered despite the fact that it was not mandatory. For example, in *CPSO v. Minnes (2015)*, the finding was one of disgraceful, dishonourable, or unprofessional conduct but, because of the horrific nature of Dr. Minnes' attempted sexual assault of a 17-year-old female counsellor at a summer camp where he was the camp physician, no penalty short of revocation would have adequately addressed the principles of penalty. The Minnes case, however, bears little similarity to that of Dr. Peirovy.

The challenge before the Committee was to arrive at a fair and just penalty which addresses the principles set out earlier, considers the case specific aggravating and mitigating factors, is in line with previous decisions in similar cases, and considers the totality of the evidence in the case.

The Committee carefully considered College submissions that, nothing short of revocation of Dr. Peirovy's certificate of registration would adequately address the need to maintain public confidence in the integrity of the profession and in its ability to regulate itself effectively.

The Committee accepted that the maintenance of public confidence is a shifting standard. In this regard, counsel for the College referred to the College's Revised Draft Sexual Abuse Principles of September 10, 2015, which would propose more severe penalties for incidents of sexual abuse which have historically not been subject to mandatory revocation.

Maintaining public confidence in the integrity of the profession, while certainly of great importance is, however, just one of several factors to be considered by the Committee in arriving at an appropriate penalty. The protection of the public is generally taken as the paramount principle. Although the two principles are not identical, and there will be cases where the egregious nature of the misconduct itself will demand revocation even where the risk of re-offence is low, a well-informed public would be expected to maintain confidence in a self-regulating process which results in the public being protected from abusive physicians.

In Dr. Peirovy's case, the Committee does not fully accept the College's submission that his sexual actions with the four victims are unexplained. What does remain unclear is a full understanding of Dr. Peirovy's motivations. The expert evidence, however, now effectively rules out psychopathy or sexual deviance, and this is an important finding with respect to the issue of Dr. Peirovy's motivation. While this finding itself does not completely rule out a degree of prurient interest in his patients on Dr. Peirovy's part, it does improve the prognosis and lessens the risk of re-offence.

Further, the Committee was of the view that we do, in fact, understand some of the antecedents to Dr. Peirovy's sexual misconduct. This, again, has been confirmed by the expert evidence. Dr. Peirovy is a physician who, at the time this misconduct occurred, had very serious deficits in his communication skills, his sensitivity to the extent of his patients' vulnerability, and his understanding of boundaries and consent. These deficits in no way diminish or excuse the fact that he repeatedly subjected several patients to abusive experiences. In the view of the Committee, however, Dr. Peirovy's awkward,

unskilled, and non-empathic manner with his female patients was a factor in understanding his abusive behaviour.

The Committee accepted the expert evidence that these areas in which Dr. Peirovy was lacking can be remediated with professional training, communication training and counseling. The evidence was that he has made substantial gains in this area, but that he has further work to do. In this regard, it is apparent to the Committee that Dr. Peirovy still has not taken full responsibility for his actions. This confirms that a condition for ongoing remediation should be part of any penalty order.

The fact that Dr. Peirovy's sexual misconduct with these four patients occurred in fairly close succession, over a time frame of several months, and continued to occur even after he was aware that a complaint had been made, was considered by the Committee. The Committee did not, however, infer that this pattern is indicative of predatory intent or uncontrollable deviant urges on Dr. Peirovy's part, and thus a serious aggravating factor. In fact, the expert evidence appears to rule out motivation of this nature. Another possible inference is that this pattern reflects a physician who was genuinely and completely unaware of the ways in which his behaviour in relation to his patients was, in fact, abusive. It is significant that, since 2010, there have been no further complaints. Dr. Peirovy has been chaperoned during this entire time. The Committee concluded that, with a chaperone present, Dr. Peirovy can continue to practise safely.

The extent of Dr. Peirovy's engagement in his rehabilitation is seen by the Committee as a mitigating factor. The evidence was that he actively sought out professional assistance over two years ago. He has worked diligently with Dr. D since then. He is described as highly motivated to address his areas of weakness, and looks forward to continuing to work with Dr. D in the future. The evidence was that he is sincerely embarrassed at and ashamed of his actions, and that he never wants this to happen again. Although it is apparent to the Committee that he still has more work to do, to date his commitment to his rehabilitation has been commendable.

The Committee places substantial weight on the uncontradicted expert evidence of Dr. M that Dr. Peirovy is at low risk of re-offence. With the specific conditions which the Committee intends to impose on his certificate of registration, the Committee believes that whatever risk to the public exists can be safely managed while also allowing Dr. Peirovy to eventually continue to practise.

The Committee is of the view that the following order will ensure that the public is protected, and will also address the important principle of maintenance of public confidence in the integrity of the profession and in the effectiveness of self-regulation. The rehabilitative needs of Dr. Peirovy have been addressed. Specific and general deterrence should also be served. The penalty, in the view of the Committee, is consistent with similar penalties previously imposed by the Discipline Committee in similar cases.

COSTS

The parties were in agreement on the issue of costs. The Committee finds that this is an appropriate case in which to award costs. Costs are ordered in the amount of $35,680.00.

ORDER

The Discipline Committee orders and directs that:

1. The Registrar suspend Dr. Peirovy's certificate of registration for a period of six months, effective as of the date of this order at 11:59 pm.

2. The Registrar impose the following terms, conditions and limitation of Dr. Peirovy's certificate of registration:

Practice Monitor

a) Dr. Peirovy shall not engage in any professional encounters with female patients of any age unless the patient encounter takes place in the presence of a monitor who is a female member of a regulated health profession and who is acceptable to the College (the "Practice Monitor"), to be reconsidered upon application to the Committee by

Dr. Peirovy after a minimum of one year following his return to practice once his suspension has ended;

b) At all times, Dr. Peirovy shall ensure that the Practice Monitor shall:

   i. Remain in the examination room or consultation room at all times during all professional encounters with all female patients, even if another person is accompanying the patient;

   ii. Carefully observe all of his physical examinations (including but not limited to breast and chest examinations) of all female patients, with an unobstructed view of the examination;

   iii. Refrain from performing any other functions, except those required in the Practice Monitor's undertaking attached as Appendix "A" (the "Practice Monitor's Undertaking"), while observing him in all his professional encounters with female patients;

   iv. Keep a patient log in the form attached as Appendix "B" to this Order of all the female patients with whom Dr. Peirovy has an in-person professional encounter in the Practice Monitor's presence (the "Log");

   v. Initial the corresponding entry in the records of each patient noted in the Log to confirm that the Practice Monitor was in the presence of Dr. Peirovy at all times during each female in-person professional encounter;

   vi. Submit the original Log to the College on a monthly basis; and

   vii. Provide reports (as described in the Practice Monitor's Undertaking) to the College on at least a monthly basis.

c) Dr. Peirovy shall maintain a copy of the Log at all times, and shall make it available to the College upon request;

Notification of Practice Locations

d) Dr. Peirovy shall inform the College of each and every location that he practices including, but not limited to, hospital(s), clinic(s) and office(s), in any jurisdiction

(collectively the "Practice Location(s)"), within fifteen (15) days of this Order. Going forward, he shall inform the College of any and all new Practice Locations within fifteen (15) days of commencing practice at that location;

Posting a Sign

e) Dr. Peirovy shall post a sign in his waiting room(s) and each of his examination and/or consulting rooms, in all of his Practice Locations, in a clearly visible and secure location, in the form attached hereto as Appendix "C";

f) Dr. Peirovy shall provide patients with a guide to access the Discipline Committee's decision in this matter, if requested;

Monitoring

g) Dr. Peirovy shall consent to the College making appropriate enquiries of the Ontario Health Insurance Plan and/or any person or institution who may have relevant information in order for the College to monitor Dr. Peirovy's compliance with the terms of this Order and shall promptly sign such consents as may be necessary for the College to obtain information from these persons or institutions;

h) Dr. Peirovy shall submit to, and not interfere with, unannounced inspections of his Practice Locations and to inspections of patient charts by the College and to any other activity the College deems necessary, including simulated patients, in order to monitor Dr. Peirovy's compliance with the terms of this Order;

i) Dr. Peirovy shall consent to the College providing any and all information to the Practice Monitor that the College deems necessary or desirable in order to assist the Practice Monitor in fulfilling her Undertaking and in order to monitor Dr. Peirovy's compliance with the terms of this Order; and

j) Dr. Peirovy shall consent to all Practice Monitors disclosing to the College, and to one another, any information relevant to this Order, relevant to the terms of the Practice Monitor's Undertaking and/or relevant for the purposes of monitoring Dr. Peirovy's compliance with this Order;

Individualized Instruction

k) Dr. Peirovy continue to undergo individualized instruction with Dr. D on issues of consent, the maintenance of boundaries, and doctor/patient communication, and that Dr. D report to the College on Dr. Peirovy's progress each six months, with a final report to follow prior to her termination of instruction with Dr. Peirovy. Termination of the individualized instruction shall be at the discretion of Dr. D;

Clinical Education Program

l) Dr. Peirovy shall, within 90 days of the commencement of the suspension of his certificate of registration, meet with a physician advisor from the College to establish a clinical education program, directed by a supervisor acceptable to the College, regarding the issue of physical examination, with particular focus on issues of the sexual privacy of and sensitivity to female patients.

m) All the above terms and conditions to be at Dr. Peirovy's expense.

3. Dr. Peirovy reimburse the College for funding for patients therapy, pursuant to the program required under section 85.7 of the Code, and that he post an irrevocable letter of credit or other security acceptable to the College to guarantee payment, in the amount of $64,240.00.

4. Dr. Peirovy appear before the Committee to be reprimanded, not later than six months from the date this Order becomes final.
5. Dr. Peirovy pay costs to the College in the amount of $35,680.00 within sixty (60) days of the date of this Order.
6. In light of the fact that this Order is different from the penalty proposed by either party, the parties have ten days from the date of this Order to make written submissions with respect to any issues related to the implementation of this Order. To be clear, the Panel is not inviting submissions with respect to the substance of this Order or the start date of the period of suspension, but simply wishes to provide the

parties with an opportunity to address any potential difficulties with the implementation of this Order which may not have been apparent to the Committee.

APPENDIX "A"
TO THE ORDER OF THE DISCIPLINE COMMITTEE OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO RE DR. JAVAD PEIROVY, DATED APRIL 27, 2016 (the "Order")
TO
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
(the "College")
UNDERTAKING OF _____,
PRACTICE MONITOR FOR DR. PEIROVY

1. I have read the Order and am aware of the College's duty to protect the public. I have asked any questions I may have about the Order and my role as Dr. Peirovy's Practice Monitor and have received answers to my satisfaction.

2. I am 21 years of age or older.

3. I am a regulated health professional. I am a registered member of the College of _____of Ontario (Registration# _____).

4. Commencing from the date I sign this Undertaking with the College, I agree to act as a Practice Monitor for Dr. Peirovy ("Practice Monitor").

5. I understand that the Order for Dr. Peirovy requires that a Practice Monitor be present at all times when he engages in a professional encounter with all female patients and I agree to so be present.

6. I further understand and agree that Dr. Peirovy may not commence or continue any professional encounter with any female patient without my presence, even if another person is accompanying the patient.

7. I agree not only to be present, but to carefully observe all of Dr. Peirovy's interactions with all female patients.

8. I agree that I shall not perform any other functions, except those required of me by this Undertaking, while observing each of Dr. Peirovy's professional encounters with female patients.

9. I agree to keep a patient log in the form attached as Appendix "B" to the Order for Dr. Peirovy of all the patients that Dr. Peirovy has an in-person professional encounter with in my presence.

10. I agree to initial the corresponding entry in the records of each patient noted in the Log to confirm that I was in the presence of Dr. Peirovy at all times during each in-person professional encounter.

11. I agree to submit the **original** Log and a written report to the College on the 1st of each and every month. I agree to keep and secure a copy of the original Log. The report will

indicate my compliance with my Undertaking, Dr. Peirovy's compliance with the Order and any other information I believe will assist the College in their monitoring of Dr. Peirovy.

12. If I believe that Dr. Peirovy's behaviour and/or actions are improper in any way, I will immediately notify the College's Compliance Monitor.

13. If any patient examined by Dr. Peirovy expresses any concern regarding improper behaviour and/or actions by Dr. Peirovy, I will immediately notify the College's Compliance Monitor.

14. I confirm that Dr. Peirovy has consented to my disclosure to the College, and to all other Practice Monitors, of all information relevant to the Order for Dr. Peirovy, relevant to the terms of my undertaking, relevant for the purposes of monitoring Dr. Peirovy's compliance with the Order and/or otherwise necessary to fulfill the terms of my undertaking.

15. I acknowledge that all information that I become aware of in the course of my duties as Dr. Peirovy's Practice Monitor is confidential information and that I am prohibited, both during and after the period of monitoring, from communicating it in any form and by any means except in the limited circumstances set out in subsections 36(1)(a) through 36(1)(j) of the *Regulated Health Professions Act, 1991,* S.O. 1991, c. 18 (the "RHPA").

16. I undertake to notify the College and Dr. Peirovy in advance wherever possible, but in any case immediately following, any communication of information under subsection 36(1) of the RHPA.

17. I agree to inform the College in writing within 24 hours if there is any change in my status or to the terms of my certificate of registration at the College of _____ of Ontario.

18. I agree to inform the College's Compliance Monitor immediately, in writing, if I am unwilling or unable to fulfill any of the terms of my Undertaking.

Dated at_____this _____ day of , 2016.

_____ _____

Monitor *(print name)* **Monitor *(signature)***

_____ _____

Witness *(print name)* **Witness *(signature)***

APPENDIX "B"
TO THE ORDER OF THE DISCIPLINE COMMITTEE OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO RE DR. JAVAD PEIROVY, DATED APRIL 27, 2016 (the "Order")
TO
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
(the "College")

PATIENT LOG RE: DR. PEIROVY

Patient Name	Date (dd/mm/yyyy)	Patient's Date of Birth (dd/mm/yyyy)	Time (in/out)	Corresponding chart entry signed	Notes

APPENDIX "C"
TO THE ORDER OF THE DISCIPLINE COMMITTEE OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO RE DR. JAVAD PEIROVY, DATED APRIL 27, 2016 (the "Order")

TO
COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO
(the "College")

IMPORTANT NOTICE

Dr. Peirovy must not have encounters with female patients of any age, unless in the presence of a practice monitor acceptable to the College of Physicians and Surgeons of Ontario.

Dr. Peirovy must not be alone in any examination or consulting room with any female patient.

Further information may be found on the College website at www.cpso.on.ca

SUPPLEMENTAL REASONS ON PENALTY

These supplemental reasons are being provided in response to written submission received on April 27, 2016 from counsel for Dr. Peirovy. Dr. Peirovy has requested that the term of the Committee's Order requiring that the Registrar suspend Dr. Peirovy's Certificate of Registration effective as of 11:59 p.m. on April 27, 2016, be amended to provide him with 60 days to wind-up his practice prior to implementation of his suspension. Dr. Peirovy indicates that he had sought this relief at the time of his submissions on penalty and the College had not opposed this request.

In paragraph 6 of the Committee's Order, the Committee stated:

> In light of the fact that this Order is different from the penalty proposed by either party, the parties have ten days from the date of this Order to make written submissions with respect to any issues related to the implementation of this Order. To be clear, the Panel is not inviting submissions with respect to the substance of this Order or the start date of the period of suspension, but simply wishes to provide the parties with an opportunity to address any potential difficulties with the implementation of this Order which may not have been apparent to the Committee. (emphasis added)

Contrary to the suggestion in Dr. Peirovy's written submissions of April 27, 2016, the Committee did specifically direct its consideration to Dr. Peirovy's prior request that any suspension commence 60 days after release of its Order. As indicated in paragraph 6 of our Order, the Committee was not inviting written submissions with respect to the start date of the period of suspension.

Although the College did not oppose Dr. Peirovy's request to delay the implementation of any suspension, the Committee is of the view that an immediate suspension is appropriate in these circumstances. Dr. Peirovy's professional misconduct was serious. The suspension is, in part, intended to sanction Dr. Peirovy for his wrongdoing. As a

matter of principle and in the interest of public protection, the Committee does not endorse providing members who are to be suspended with the luxury of time before implementation of a suspension that is ordered. While the Committee recognizes that there may be limited circumstances in which some delay is appropriate when taking into account the immediate needs of a particular patient population, those factors do not exist in this case. The Committee's Penalty Order provides for significant individualised instruction and clinical education before Dr. Peirovy is permitted to return to practice under close monitoring. There is no public interest to be served in delaying the implementation of the suspension. The request is denied.