

**Indexed as: Lambert (Re)**

**THE DISCIPLINE COMMITTEE OF THE COLLEGE  
OF PHYSICIANS AND SURGEONS OF ONTARIO**

**IN THE MATTER OF** a Hearing directed  
by the Complaints Committee of  
the College of Physicians and Surgeons of Ontario  
pursuant to Section 26(2) of the *Health Professional 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. DAVID STUART LAMBERT**

**PANEL MEMBERS:** DR. C. HILL (CHAIR)  
DR. Y. DEBUDA  
G. DEGROOT  
R. SANDERS  
DR. M. SPRUYT

**Hearing Dates:** May 13 – 16, 2002

**Decision/Released Date:** May 15, 2002

**Penalty Decision/Released Date:** May 16, 2002

**PUBLICATION BAN**

## DECISION AND REASON FOR DECISIONS

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on May 13, 14, 15 and 16, 2002. The Committee delivered a written decision on its findings on May 15, 2002 and its penalty order on May 16, 2002, and indicated that written reasons for the decision on finding and penalty would follow.

### PUBLICATION BAN

The Committee ordered that no person shall publish the identity of the complainants or any information that could disclose the identity of the complainants under subsection 47(1) of the Code.

### ALLEGATIONS

The Notice of Hearing alleged that Dr. David Stuart Lambert committed professional misconduct:

1. contrary to clause 51(1)(b.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 in that he engaged in the sexual abuse of a patient; and
2. contrary to paragraph 1(1)(33) of Ontario Regulation 856/93 of the *Medicine Act* for 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.

### PLEA

At the outset of the hearing, the particulars of the allegations were reviewed. Dr. Lambert admitted to the fact that, in respect of patient #1 (complainant 1), he squeezed her thighs and dropped his pants exposing himself from the waist down. He also admitted to the fact that, with respect to patient #2 (complainant 2), he told her that he did not appreciate having to do other physicians' work with respect to drawing blood. Dr.

Lambert admitted that these facts constituted professional misconduct. Dr. Lambert pleaded not guilty to all other particulars of the allegations.

## **EVIDENCE OF THE COMPLAINANTS**

There were four complainants, all of whom testified. The events in question took place in the year 2000. All the complainants were patients of Dr. Lambert although they did not consider him to be their family physician. All visited Dr. Lambert at his office in a shopping mall for their own or their children's minor illnesses. All stated that they saw Dr. Lambert because the office, which also served as a walk-in clinic, was conveniently close to their homes or place of work.

### **(i) Testimony of Complainant 1**

Complainant 1 testified that she was an infrequent patient of Dr. Lambert since 1994, visiting him for her or her children's minor medical complaints when she was unable to visit her family doctor downtown or when the family doctor was not available. In November of 2000 she visited Dr. Lambert seeking a certificate of illness for her work place. She was very stressed at the time with a combination of work issues, upcoming examinations, and difficulty with her children all at the same time. When she told Dr. Lambert about these stresses, he replied that he was stressed as well. He volunteered information about a recent trip where he had viewed black women with big breasts. He advised her to slow down and consider massage therapy. He then proceeded to tell her that he would like to have an affair with her and asked her if she had "ever been with a white guy". He expressed concerns that maybe his penis would not be big enough for her then showed her his penis. He asked her if she would like to kiss it. He told her he trusted that she would not tell his wife or blackmail him. Complainant 1 stated that she did a lot of shoulder shrugging throughout this exchange but said nothing. As she left, he french-kissed her and she kissed him back. This episode took place in Dr. Lambert's examination room, which she identified from photographs that were placed in evidence. No medical examination took place on this occasion.

Complainant 1 also testified that Dr. Lambert contacted her by telephone later that day and told her he had enjoyed the kiss and that he would like to see her again. She responded "I don't know" and he called her again the following morning. She went to his office around lunchtime the next day, because he asked her to.

Complainant 1 testified that, again, they were in the examining room and Dr. Lambert closed and locked the door. Dr. Lambert undid his pants, took his erect penis out and asked her to kiss it, which she did. He then pulled her shirt up and placed his penis against her vagina. There was no penetration. She responded by saying that she didn't think this was a good idea. After a short interruption by a knock on the door, Dr. Lambert pulled her wrap-around top to one side and sucked on her nipples. She indicated that he offered to rent a hotel room and to purchase condoms. She again said that she didn't think this was a good idea. They kissed and he left, saying he'd call her. When asked if she had deliberately dressed in a provocative manner for this visit, she replied that this was the way she always dressed.

Complainant 1 testified that she returned to his office in December of 2000 with the intention to videotape the visit. She had told her ex-husband of the previous events and he showed very little reaction. Complainant 1 was convinced that no one would believe her story without proof. Her ex-husband arranged the technical aspects of the taping. At one point in this visit, Dr. Lambert removed his pants while leaving his underwear on. The only actual contact was a hug before complainant 1 left. A videotape of this visit was entered into evidence. There is no sound on this tape and the tape is of poor quality in that something appears to be in front of the camera blocking the view for much of the tape. Complainant 1 stated that she was very nervous that Dr. Lambert would recognize the small camera and tried to hide it when he looked in that direction. The tape viewed at the hearing is a copy of the original tape produced that day but the events taped speak for themselves. Dr. Lambert was seen to remove his pants and put them aside for a period of about one minute while he talked to complainant 1. There is no medical examination apparent on this tape.

Complainant 1 testified that she called and asked to see Dr. Lambert again in December of 2000 because the first tape did not show his face. A videotape of this visit was entered into evidence. In this tape, the entire visit was taped including the wait in the waiting room and complainant 1 leaving and getting into a car in the parking lot. Again, there is no audio and no medical examination takes place during this visit. The tape shows that complainant 1 dons a patient gown but leaves her underwear on. When Dr. Lambert returns to the room, he caresses her thighs and looks under the gown. She then removes her panties. Dr. Lambert then positions complainant 1 at the end of the table as if for a pelvic examination but her feet are not in the stirrups. He then lowers his head between her legs and she draws back and sits up. Dr. Lambert then positions her sitting on the side edge of the table. He appears to touch her perineal area and definitely touches the inside of her bare thighs. She stands and he puts his hands on her bare buttocks, pulls her toward him and hugs her. At this point, Dr. Lambert is fully clothed. Next, he removes his pants and underpants displaying a bare, erect penis. They are talking throughout this activity but cannot be heard. Then, complainant 1 gets up from the table, appears to be talking on a cell phone, gets dressed, and leaves.

Complainant 1 appears visibly nervous on this tape. Dr. Lambert initiates all the position changes while touching complainant 1. She testified that he also instructed her verbally, for instance to take off her underpants. Complainant's body language throughout is one of partial compliance with Dr. Lambert's directions and reluctance to allow Dr. Lambert to engage in certain activities such as performing oral sex on her.

Complainant 1 confirmed in her testimony that the tapes represented a true account of the activities of those visits. She stated that she had not viewed these tapes before but had a clear recollection of the visits. There is a discontinuity in one tape where the date and time counter shows three seconds of the second visit of December 2000 segment in the first visit of December 2000 segment. She had no explanation for this and stated that she handed the original tapes over to her ex-husband and has not viewed them since. She confirmed that she had brought a civil suit against Dr. Lambert but denied that the videotapes were made for this purpose. She insisted that the tapes were made so that

people would believe her and that Dr. Lambert was her doctor and this “just wasn’t right”. She made a very powerful statement about how she had trusted him and that she knew these activities were wrong. These episodes made her feel humiliated, embarrassed, stupid and confused and she tried to block out the memories. She thought about how she had put herself in this position and about how she might have avoided it. Now, the only doctor that she will see is her family doctor.

Asked if she may have started this chain of events, she responded that she “was not like that with my doctor”, “I wasn’t raised like that”, “my doctor is my doctor and that’s what I seed [sic] him as”. She also confirmed that Dr. Lambert was not hostile or aggressive but he was persistent throughout.

Complainant 1 testified firmly throughout without contradicting her testimony. She expressed herself plainly in simple terms. The Panel considered her a credible witness.

#### **(ii) Testimony of Complainant 3**

Complainant 3 testified that she suffered a motor vehicle accident in mid December of 2000, visited an emergency room and saw Dr. Lambert in his office the next day. He recommended massage therapy. He also told her that, if she didn’t allow him to have oral sex with her or intercourse, she would stay sick because she was lonely and needed someone. She also alleged that, on several occasions, he touched her breasts while taking her blood pressure or allowed his hands to go from her shoulders to her breasts while examining her. He commented that her breast was nice and just the right size for him. According to complainant 3, he stated “if you allow me to have oral sex with you, you’ll be OK”. She was upset because pictures of his family were in the examining room. She confirmed that the photographs previously introduced as evidence were of his examining room. The pictures of his family are clearly visible in these photographs. Her reply was: “you’re crazy, why would I allow you to”.

Complainant 3 testified that, in retrospect, she feels that Dr. Lambert said something inappropriate to her every time she visited his office. She continued to return to see him

for medical care because his office was close to her home, there was no other clinic that close and she would have to wait a very long time in a hospital emergency department.

Complainant 3 testified that, one day, she visited Dr. Lambert with a male friend and he stated that if she was well enough to visit him with a male friend she was well enough to go to work. This ended the relationship with Dr. Lambert.

She stated that on one occasion she had audio-taped a patient visit with Dr. Lambert to assure herself that the comments actually had taken place and that it wasn't all in her mind. When she listened to the tape, she felt dirty, used and cheap. Complainant 3 was visibly upset and crying at this point in her testimony. The tape has since gone missing, possibly (as she testified) taped over by one of her children.

While she did allow Dr. Lambert to examine her breast on one occasion, she stated that she never allowed him to perform a gynecological examination of her because she did not trust him.

Complainant 3's original College complaint does not mention the breast touching episodes. She does not recall writing the letter of complaint and states that she only answered questions put to her during the interview with the investigator.

The Panel considered that her emotion while testifying was genuine. Her testimony was forthright even when it did not reflect well on her behalf.

### **(iii) Testimony of Complainant 4**

Complainant 4 testified under subpoena and stated that, when she made her complaint, she did not know she would have to appear at this hearing. She also requested screening from Dr. Lambert while she testified. Dr. Lambert waived his right to be present during her testimony.

Complainant 4 testified that she started seeing Dr. Lambert as a patient in 1996 because his clinic was convenient. She stated most of the visits were for minor medical problems with her children. In January 2000, she suffered a motor vehicle accident. After seeing her family doctor, she still had pain and sought an opinion from Dr. Lambert. He arranged chiropractic therapy for her. When she complained of dry skin, Dr. Lambert placed his hand on her thigh and leaned in very closely to inspect her face. She purchased face cleanser and moisturizer from him in his office.

When she told Dr. Lambert that her husband was massaging her, he replied that her husband was not a doctor. He then suggested that she take her clothes off and he take his clothes off and that they give each other a back rub. When it was suggested to her in the course of her testimony that she might have confused this remark with a suggestion by Dr. Lambert that she undergo massage therapy, she was firm that she remembered the conversation well and that the remarks definitely referred to Dr. Lambert and herself. He also asked her, in the course of a visit that dealt with her back problems, how many orgasms she had when she and her husband made love. Dr. Lambert would then laugh and she wondered whether he was joking with her. She continued to see him because the massage therapy was helping her and because he told her that, to continue the therapy, she would have to see him regularly.

Complainant 4 was frank about the fact that she had tried to block out these memories and get on with her life. She was uncertain about details such as the number of times she saw Dr. Lambert, the dates and the possible reasons for some of the visits. She was firm in her testimony that she had a clear recollection of the comments she reported. She obviously tried hard to give factual answers and admitted frankly when she did not know the answer. The Panel found her credible.

#### **(iv) Testimony of Complainant 2**

Complainant 2 testified that she saw Dr. Lambert in his clinic in November of 2000. She had been to see her family doctor, who had ordered blood tests. He told her she could go to any medical clinic to have them done. She chose Dr. Lambert because his clinic was

in the mall where her friend picked her up for work and it was convenient. The visit took place at approximately 3:50 p.m.

Complainant 2 testified that Dr. Lambert told her that he did not appreciate having to do other doctor's work. Complainant 2 felt that he was rude and arrogant and didn't make her feel at all welcome. He also told her that she would have to purchase a skin care product from him before she left, although she herself did not mention the subject of skin care. When he asked for her friends' names and she said that she didn't have any, he became arrogant and angry with her.

### **EVIDENCE OF DR. DAVID STUART LAMBERT**

Dr. Lambert is a general practitioner licensed in Ontario who received his MD in 1978 and has been a member of the Canadian College of Family Practitioners since 1980.

Dr. Lambert testified that complainant 4 had consulted him about some family tensions in the past and had complained of sexual fatigue with her husband. The notes of an office visit, which occurred in March of 1996, confirm this. He stated that the visit would have included a discussion of sexual gratification, orgasms and possible depression. A further discussion, which took place in April of 2000, concerned complainant 4's interpersonal and sexual problems with her husband. Dr. Lambert denies ever making inappropriate remarks about orgasms out of this context. He also testified that, in the course of treatment for her pain following the motor vehicle accident, he would have told her she could have a full body massage by a registered massage therapist.

Dr. Lambert also denied touching the breasts of complainant 3, commenting on their size or discussing oral sex with her. He also denied making comments that she was well enough to return to work because she appeared in his office with a male friend.

Dr. Lambert confirmed that complainant 1 was his patient for general medical care for 6 years. On the visit for an eye infection in November of 2000, when complainant 1 was asking for a certificate for work, he stated that she had asked him general questions about

where he had been lately. He does recall telling her about his visit to a trade fair where he had a booth selling skin care products. This fair was actually in the city, not out of the country, and was called “The Everything to do about Sex” trade show. During the course of the fair, both black and white female topless table dancers were in evidence close to his booth and he related this information to complainant 1. He does not recall mentioning the size of the breasts displayed to complainant 1. In his recollection, complainant 1 asked him to take her on a trip with him and stated that she would like to have an affair with him.

With respect to the events on the videotapes of the two December 2000 visits, Dr. Lambert testified that he did not recall these events until he viewed the videotape. He stated, “if it’s on the video I did it, otherwise I don’t recollect”. He denied any inappropriate sexual touching, then or in November, except that seen on the tapes. He stated that he took his pants off because she asked him to, although he did acknowledge that it was up to the physician to set boundaries in such circumstances. He agreed that the events pictured on the tapes was irrefutable evidence of impropriety and that they involved C.N. and himself. There is no record in the clinic notes of a second visit in December of 2000 and Dr. Lambert agreed that there was possibly no medical reason for the visit. He also agreed that he called complainant 1 at her home on at least one occasion. With respect to all other remarks, hugs and comments reported by complainant 1, Dr. Lambert testified that he has no recollection of these.

Dr. Lambert testified that he was under a great deal of stress at the time of these purported events. He was emotionally and physically distraught over his finances, a recent office break-in where he lost twenty years of computerized patient documents and marital difficulties. He stated that he was not much of a father to his children during this period. He was visibly disturbed and weeping during this testimony.

Dr. Lambert was shown a copy of the reply that he made to the Complaints Committee of the College dated May 23, 2001, in which he stated “I categorically deny that I have ever

behaved inappropriately in a sexual or other manner with any of the three complainants” and “In particular, I deny I ever sexually assaulted or made any inappropriate comments to any of the complainants.” Dr. Lambert stated that he did not know that there was a videotape when he wrote the letter. He agreed that he made a mistake in misleading the Complaints Committee by not admitting to the events portrayed on the tape. He also stated that he did not intentionally lie to the Complaints Committee.

Dr. Lambert visited a psychiatrist for assessment during the investigation. In the psychiatrist’s report, he indicated that Dr. Lambert recognized that he acted inappropriately with these women. He agreed that his behaviour could not be excused by any behaviour on the part of the women.

In his written reply to the Complaints Committee concerning the complaint by complainant 2, Dr. Lambert gave as a cause for his behaviour the fact that she appeared at lunch time on a very busy day and that this anger was professional under the circumstances. He now regrets his behaviour and the reply that stated the wrong time for the visit.

The Panel considered Dr. Lambert’s testimony to be evasive and contradictory.

## **FINDINGS**

On May 15, 2002, the Committee found that Dr. David Stuart Lambert committed an act of professional misconduct contrary to clause 51(1)(b.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 in that he engaged in the sexual abuse of a patient.

Three women independently complained to the College about behaviour and/or remarks of a sexual nature that occurred in Dr. Lambert’s examining room at his clinic. A fourth woman independently complained about unprofessional behaviour. These events all occurred late in the year 2000. There was no evidence that these complainants knew one another. The complainants had little to gain in bringing forward these complaints. All

testified that they had been traumatized by the events and wished to put the incident(s) behind them. Complainant 4 was upset enough to be reluctant to appear at the hearing.

Dr. Lambert concurred at the outset of the hearing that he had squeezed complainant 1's thighs and that he dropped his pants exposing himself from the waist down. He denied or did not recall any of the other particulars of the allegations. The Panel found, on balance, that it was frankly unbelievable that the events shown on the videotapes could occur in a doctor's office without the doctor recalling the details of the incident. Removing his pants and exposing his erect penis, even if at the request of the patient, can in no way be considered appropriate or professional behaviour. The behaviour is disgraceful and brings the profession into disrepute.

The Committee accepted the testimony of all three complainants as to the behaviour and remarks of a sexual nature that occurred in Dr. Lambert's examining room. There is concrete evidence of events of a sexual nature perpetrated by Dr. Lambert's two office visits in December 2000 as shown on the videotapes. Dr. Lambert did not deny that these events took place as shown. He did deny these events until he became aware of the existence of the videotapes. The Committee finds that this fact demonstrates the self-serving nature of Dr. Lambert's attempts to mislead the College and speaks to the veracity of his testimony in general.

Dr. Lambert obviously has difficulty understanding or abiding by the proper boundaries of the doctor-patient relationship as demonstrated by the evidence on the tapes.

Having considered the evidence in connection with the complaints by complainant 1, complainant 3, and complainant 4, the Committee finds that Dr. Lambert engaged in the sexual abuse of patients as follows:

**With respect to Complainant 1:**

- by removing his trousers and his underpants and exposing his erect penis

- by engaging in touching of a sexual nature by caressing her thighs, sucking on her breasts, hugging, kissing and French kissing
- by touching her bare buttocks and pulling her toward him to hug her
- by touching her vagina with his penis
- by requesting that the patient kiss his penis, to which request the patient acceded
- by making the following remarks: requesting “to taste her pussy”, suggesting that he would like to have sex with her, offering to take her to a hotel, and to provide condoms

**With respect to Complainant 4:**

- By making remarks of a sexual nature by suggesting that they both remove their clothes in his office and give each other a backrub

**With respect to Complainant 3:**

- by making remarks of a sexual nature by suggesting that if he performed oral sex with her it would relieve her stress symptoms
- by making remarks of a sexual nature by suggesting that her breasts were the right size for him

The Committee also finds that all of the findings enumerated above with respect to Dr. Lambert’s conduct constitute acts of professional misconduct contrary to paragraph 1(1)(33) of Ontario Regulation 856/93 of the *Medicine Act* for an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee also finds that Dr. Lambert committed additional acts of professional misconduct as follows:

**With respect to Complainant 1:**

- by volunteering information about his personal life in regard to his attendance at a trade show entitled “Everything to do with Sex” and commenting on the size of topless women’s breasts in attendance at the show

**With respect to Complainant 2:**

- by attempting to persuade her to purchase a non-medical product from him during the course of a routine visit for blood tests, becoming angry when she declined and then when she refused to provide him with the names of her friends, allowing his anger to become apparent.

**ORDER AS TO PENALTY AND COSTS**

On May 16, 2002, the Committee heard oral arguments from both counsel for the College and Dr. Lambert. Under clause 51(1)(b.1) of the Code, revocation of a physician’s registration is mandatory in findings of sexual abuse (genital to genital contact; oral to genital contact) of the nature found by this Committee. A formal reprimand is also mandatory.

The Committee was informed that Dr. Lambert had received a six-month suspension for sexual remarks in September 1990.

The Committee considered that, even if revocation was not mandatory, revocation would be the appropriate penalty in all the circumstances for the following reasons:

- The evidence suggests a repetitive nature to the sexual acts and/or remarks, even after a previous suspension for similar remarks
- Dr. Lambert has not benefited from previous psychiatric therapy in the understanding of professional boundaries in that he took off his pants during the course of an office visit when, according to his own evidence, the patient requested him to do so
- Dr. Lambert’s behaviour has escalated from sexual remarks to sexual activity with patients, as in the case of complainant 1.

- The sexual touching took place in his office in the context of a doctor patient relationship
- Even if it were not for the sexual touching, Dr. Lambert's conduct crosses any conceivable boundary of appropriate professional behaviour
- Protection of the public must be the first consideration in any Committee decision. The findings in this case demonstrate that Dr. Lambert has betrayed a public trust
- The maintenance of the reputation and integrity of the profession and its ability to govern its members must be maintained. To serve this end, the reprehensible nature of Dr. Lambert's conduct requires rejection of the conduct and the member
- It meets the needs of general and specific deterrence in this case.

Therefore, after careful consideration of the evidence and submissions, the Panel ordered and directed that:

1. Dr. Lambert attends before the Discipline Committee to be reprimanded at a date to be set by the Registrar, and the fact of the reprimand is recorded on the Register.
2. The Registrar revoke Dr. Lambert's certificate of registration, such revocation to be effective immediately; and
3. Dr. Lambert post an irrevocable letter of credit or other security acceptable to the College in the amount of \$30,000 to reimburse the College for funding provided to the patients referred to in the schedule to the Notice of Hearing under the program required under section 85.7 of the Code.
4. Dr. Lambert pay costs to the College in the amount of \$18,750.00 representing the costs of the hearing in the amount of \$8,750.00 (3.5 days @ \$2,500 per day) and the costs of the investigation in the amount of \$10,000.00.