

## **NOTICE OF PUBLICATION BAN**

In the College of Physicians and Surgeons of Ontario and Dr. Yaghini, this is notice that the Discipline Committee ordered a ban on the publication, including broadcasting, of the name of the complainant, or any information that could identify the complainant, under subsection 47(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the Regulated Health Professions Act, 1991.

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 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. Yaghini, 2016 ONCPSD 52**

**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. REZA YAGHINI**

**PANEL MEMBERS:**

**DR. P. CHART (CHAIR)  
MR. S. BERI  
DR. C. CLAPPERTON  
DR. P. TADROS  
MR. A. RONALD**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF  
ONTARIO:**

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**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MR. D. ROSENBAUM**

**PUBLICATION BAN**

Hearing Date: July 25, 26, and 27, 2016

Decision Date: December 21, 2016

Release of Written Reasons: December 21, 2016

## 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 July 25, 26, and 27, 2016. At the conclusion of the hearing, the Committee reserved its finding.

### ALLEGATIONS

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

1. under 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. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

### RESPONSE TO ALLEGATIONS

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

### OVERVIEW

At the time of the alleged misconduct, the complainant, Patient A, was a teenage high school student. She was seen at the emergency department of the local hospital, first by Dr. McCall for a kidney infection and then several days later on a date in April 2012, by Dr. Yaghini, after she had developed an allergic reaction to a previously-prescribed antibiotic. Patient A saw Dr. Yaghini again on a later date in April 2012, when she came

to his clinic in Thornbury because she had developed a second allergic reaction. It is the details of these encounters that are the basis for the allegations.

## **THE ISSUES**

This case raises three primary issues:

- 1) Did Dr. Yaghini kiss Patient A on the cheek and attempt to kiss her on the lips?
- 2) Did Dr. Yaghini tell Patient A that she was pretty, that she reminded him of an old girlfriend, and that he “was excited?”
- 3) If the answer to either or both questions 1 and 2 is yes, do these actions and/or comments constitute sexual abuse and/or conduct that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, and unprofessional?

## **THE EVIDENCE**

The Committee heard from two witnesses, Patient A and Dr. Yaghini.

Patient A’s clinical records from the hospital and Dr. Yaghini’s office were submitted as evidence, along with a photograph of a cell phone display with Dr. Yaghini’s name and a telephone number on the screen, and some other documents.

### **The Undisputed Facts**

In April 2012, Patient A was a high-school aged teenager and lived with her parents.

Dr. Yaghini is a family physician who immigrated to Canada in 2002 from Iran. Upon his arrival in Canada, Dr. Yaghini worked at several non-medical jobs while learning English and studying for Canadian examinations. In 2009, he entered the family medicine residency program at Queen’s University, and he received his certification in Family Medicine in June 2011.

In September 2011, Dr. Yaghini started to practise at a community health centre. He also worked at the local hospital's emergency department, and had admitting privileges at that hospital.

Patient A testified that in April 2012, she had a kidney infection that was diagnosed by a doctor at the local hospital Emergency Department. The hospital records show that this was on a date in April 2012. After being given an antibiotic for the infection, she developed an allergic reaction consisting of swelling and redness around her eye, and a rash on her stomach, back, neck and chest.

As her parents were out of town, and her family doctor's office was at a distance, a family friend took Patient A to the Emergency Department of the hospital on a second date in April 2012. Dr. Yaghini saw Patient A in the examination room alone. Patient A was wearing a t-shirt and shorts that day.

Dr. Yaghini testified that he treated Patient A with Benadryl and that, after a period of observation and a follow-up examination, she showed improvement in her condition. Patient A was discharged home with a different antibiotic prescription and instructions to return either to her family doctor, the Emergency Department, or Dr. Yaghini's clinic if she had further problems. Dr. Yaghini testified that a urine culture was taken to check for a urinary tract infection.

After this, Patient A again developed a rash on her stomach, neck, chest, back, and possibly her face. She made an appointment to see Dr. Yaghini at his clinic on a third date in April 2012. She attended there with a friend, who waited outside the waiting room. Dr. Yaghini examined Patient A at his clinic that day.

## **The Disputed Facts**

### **Hospital Visit - April 2012**

#### **(i) Patient A's Evidence**

Patient A testified as to her circumstances on the date in April 2012 on which she attended the hospital. She described the symptoms she was experiencing (a rash on her

stomach, back, neck and chest and swelling and redness around her eye). She testified that she was home alone as her parents had gone to visit her grandparents. She told her mother about her symptoms and her mother decided that she should seek medical attention. A friend of the family who was to check on Patient A came to her house, spoke on the phone with her mother, and then drove Patient A to the hospital.

Patient A testified that upon arrival at the emergency room, she went through triage where a nurse took her vitals, checked her over, and had her wait in a room for the doctor.

Patient A testified that Dr. Yaghini came into the examination room, closed the door, looked at her, and told her she was “very pretty.” He then asked why she was there and she told him. Dr. Yaghini then examined her, including checking her stomach and chest for spots, and he then looked at her eye. He ordered a Benadryl shot and gave her a prescription for a new antibiotic (Norfloxacin).

On cross-examination, Patient A was taken to an interview she gave to College investigators on May 2012, at which she reported that Dr. Yaghini made the “very pretty” comment to her while he was looking at her rash, not at the outset of the examination. She said that if that was what she said then (four years before), that is what happened. She was then taken to a statement she gave to a police officer on a date in April 2012. In that statement, Patient A said that the “very pretty” comment came at the outset of the visit.

To explain the discrepancy in her account of whether the comment was at the beginning of the appointment, as she told the police, or during the examination, as she told the College investigator, Patient A testified that by the time of the interview with the College a few weeks after the alleged incident, she had time to calm down, and her memory was clearer. She acknowledged that by the date of her testimony before the Committee, given the passage of time, she did not actually remember the context of the comment; she therefore had to go back to her prior statements.

Patient A also agreed on cross-examination that it was possible Dr. Yaghini told her she was “pretty,” as opposed to “very pretty”. Patient A agreed that she could not recall with precision everything the doctor did or did not do, either on this visit or her subsequent visit.

**(ii) Dr. Yaghini’s Evidence**

Dr. Yaghini did not dispute that the events of the April 2012 appointment happened as Patient A described. Indeed, Dr. Yaghini admitted it was possible that he told her she was pretty, although not “very pretty,” as that was not something he would usually say, according to his testimony.

Dr. Yaghini explained that it was not unusual for him to pay compliments to patients. He testified that he looked for reasons to do so. He might make a remark regarding a patient’s success in business or education. He might also tell a patient that he or she looked younger than their stated age, or remark on a patient’s appearance. Dr. Yaghini testified that he did this because he wanted to put the patient at ease.

Dr. Yaghini testified that he now recognizes that a comment like “you look pretty” may have made Patient A uncomfortable. However, he testified that, at the time, he felt it was appropriate and he believed it made her feel relaxed. He denied that there was any sexual purpose to his comment. He said it never occurred to him at the time that telling Patient A that she was pretty may be interpreted by a young girl in a flirtatious or sexual way.

In order to further develop his communication skills, Dr. Yaghini took a Boundaries course in October 2012. Dr. Yaghini testified that in that course, he learned that commenting on appearance was not appropriate and that it could be construed as professional misconduct.

**Thornbury Medical Clinic Visit - April 2012****(i) Patient A's Evidence**

Patient A testified that, about 24 hours after starting the new antibiotic prescribed by Dr. Yaghini, she developed more spots on her stomach, neck, back, and possibly her face. She took a Benadryl, stopped the antibiotic medication, and made an appointment to see Dr. Yaghini at the Thornbury Medical Clinic. Patient A attended the clinic on a date in April 2012. A friend accompanied her because her mother needed to pick her younger brother up from school and was unable to go with her to the appointment.

Patient A testified that she was taken to a room by a nurse to await the doctor. She remained fully clothed, wearing a long-sleeved tee shirt and shorts, and sat on the bed. Patient A testified that Dr. Yaghini came in and had a discussion with her in which he told her that she was pretty or very pretty and that she reminded him of a woman he once dated. He then proceeded to ask if the antibiotics worked and why she was back.

Patient A testified that she specifically recalled him telling her she looked like a woman he had dated, and that those words were something that “stuck in my mind.” It was put to her that in her interview with College investigators in 2012, she had used the word “ex-girlfriend.” Patient A acknowledged that she could not recall the exact words but they were words to that effect.

Patient A testified that after she answered Dr. Yaghini's questions, he proceeded to examine her. He came over and stood in front of her, lifted her shirt, and examined her for spots. He lowered her shirt and began looking at her neck “quite closely.” He cupped her face with both his hands, around the jawline, and tilted her head to see the spots. He came extremely close and kissed her on the cheek. She pulled away. She described herself as being a little “freaked out” and wasn't sure why he was doing this. Patient A testified that after that, Dr. Yaghini still had his hands cupped on her face on her jawline (along with a small part of her chin and neck) with his fingers towards her ears. She testified that he then pulled her closer, turned her face toward him, and tried to kiss her on the lips. She pulled away harder this time.



Patient A testified that Dr. Yaghini then asked her if she was uncomfortable. She testified that she responded “no” as she was not sure what would happen if she said yes. She testified that Dr. Yaghini again told her she was pretty or very pretty and that he was sorry for making her feel uncomfortable. He then went to the computer and sat down. He told her he was going to look up her lab results from the hospital visit.

On cross-examination, Patient A added that Dr. Yaghini told her when he apologized that he had gotten “excited.” When she was asked why she had not included this detail earlier in her evidence-in-chief, she said it was because she was nervous.

According to Patient A’s testimony, after this exchange, Dr. Yaghini told her she could stay there or wait in the waiting room for the urine test results. She opted to wait in the waiting room. Patient A sat for a couple of minutes, then got up to leave, and began to walk home with her friend.

Patient A was taken to the statement she gave to the police in April 2012, in which she said that Dr. Yaghini had cupped her face in his hands and he kissed her cheek. She said to the police, “I wasn’t really sure about that and I was a little bit nervous. He then tilted my head towards him and leaned in to kiss me. I felt very uncomfortable and I pulled back.” She testified that when she said to the police she “wasn’t really sure about that,” she did not mean that she was not sure what happened. What she meant was she “wasn’t really sure about how I felt about him kissing my cheek...I wasn’t really sure about how I felt at that moment. I was nervous and scared, but I wasn’t really sure how nervous I should be.”

Patient A agreed that she did not tell the police or the College investigators that she pulled back when Dr. Yaghini kissed her on the cheek. In these reports, she only described pulling back after she perceived Dr. Yaghini trying to kiss her on the mouth. Ultimately, Patient A acknowledged that she did not clearly recollect pulling away after she perceived a kiss on the cheek.

**(iii) Dr. Yaghini's Evidence**

Dr. Yaghini denied telling Patient A that she looked like a woman he had dated or that she had made him excited, or words to that effect. He denied saying that she was “very pretty” on this visit. He testified that he might have said she was “pretty,” but he thought it unlikely, as he did not recall doing so.

Dr. Yaghini testified that upon entering the room, he greeted Patient A and sat down at his laptop. He was unable to recall all the details of his greeting of her. Dr. Yaghini testified that he usually asks the patient for his or her history and sits at his computer to type into his electronic medical record (EMR) while he is taking the history and starting the subjective entry in SOAP charting (subjective, objective, assessment, plan). He testified that is what he did when he saw Patient A in his clinic on that date in April 2012. Dr. Yaghini also testified that the date and time stamp is automatically entered on the clinic records when the clinical note is opened on the computer. The stamp on Patient A's chart reads 3:29 p.m.

Dr. Yaghini testified that after taking Patient A's history and typing it into his EMR, he asked Patient A to show him the rash, and he then stood up from his chair and walked towards her. As he was getting close to her, he had a good look at her legs and abdomen. While he was standing on Patient A's right side, he leaned over and lifted the back of her shirt, which was tight, to observe her back. He testified that he then came in front of her and examined her flanks. He stepped back towards his chair but then noticed a faint rash on her face. He testified that he got closer and leaned over her, put his right hand on her left chin, shifted her to the right side, and then shifted her head the opposite way.

In his examination-in-chief, Dr. Yaghini denied ever putting both hands (in a cupping fashion) on Patient A's face as she had described. He testified that he tilted her head to get a better look at her nasal area. On cross-examination, Dr. Yaghini testified that he did not know whether he used the same hand or the other hand to turn her head to see the right side. He agreed that he might have used both hands at the same time.

Dr. Yaghini testified that he then asked Patient A concerning spots on her face, “what are these?” and she responded that they were acne and she had squeezed them. On cross-examination, he agreed that in his response letter to the College, he did not mention that he had asked Patient A what the spots were on her face, nor that she had replied that she squeezed them.

Dr. Yaghini testified that during this time, he was leaning toward Patient A’s face to get a better look. He stated that it was at this time, he thought she was thinking maybe he was too close to her.

On cross examination, Dr. Yaghini was asked how close he leaned in to Patient A’s face. Dr. Yaghini responded, “I don’t remember, but it was not very close...Like it was not a couple of inches.” When he was pressed further, he estimated that he was a foot (twelve inches) away from her, although he said that it was just an estimate. Dr. Yaghini agreed that Patient A pulled back at some point when he was getting closer. This all happened over a short time. Dr. Yaghini testified it was when she pulled back that he realized he may have made her uncomfortable.

Dr. Yaghini testified that he stopped, said he was sorry, stepped back, and sat down on his chair. He noted that Patient A’s expression had changed, and he asked her if he had made her uncomfortable. He testified that she responded “no.” Dr. Yaghini testified that he did not notice the change in her expression until he was seated at his computer. He then knew something was bothering her. He did not ask her what was wrong, and he agreed on cross examination that he did not have to because he knew why.

Dr. Yaghini testified that he then continued to type his findings. He told Patient A that he wanted to get an ultrasound of the kidney and he needed to see if the hospital report of the urine culture had arrived. He spoke with his staff, returned to the room, and told Patient A that she could wait in the waiting room. He then went to see his next patient. He agreed that his EMR shows that the next patient record was opened at 3:37 p.m.

Dr. Yaghini denied ever kissing Patient A on the cheek, or attempting to kiss her on the mouth.

### **Subsequent Events including the Second Office Visit - April 2012**

Patient A testified that, after sitting in the waiting room for a few minutes trying to figure out what had happened and why, she left the office accompanied by her friend and started to walk home. Patient A testified that she started to cry and that when her friend asked her what was wrong, Patient A told her what had happened.

Upon reaching home, she received a call from her mother, who had been upset that Patient A had not waited at the clinic for her as she was supposed to do. Patient A then told her mother what had happened and started crying again. Within a few minutes, her mother arrived home and asked her what happened. They all piled in the car and went back to the clinic where her mother confronted Dr. Yaghini.

Dr. Yaghini testified that later on the day of Patient A's clinic visit, he heard loud talking and came out and saw a woman talking loudly to his receptionist. She accused him of trying to kiss her daughter. Dr. Yaghini testified that he was shocked, and he did not know what was going on until he saw Patient A. He then realized why they had come, and it was because Patient A had felt uncomfortable.

Dr. Yaghini described Patient A's mother as aggressive and loud. He agreed that she said she was going to call the police. He asked her to come in and calm down. He testified that he said, "okay, let's call the police." He testified that she did not listen and left. Patient A's mother did not testify at the hearing.

Dr. Yaghini testified that he was in the middle of seeing a patient during this confrontation, and that he called the police as soon as he had time and informed them of the accusation. He was interviewed by the police two days later.

After leaving the clinic and dropping off the friends who were with them, Patient A and her mother went to the police station.

Patient A testified that Dr. Yaghini phoned her home either the day after the clinic appointment, or within a few days after. She did not pick up the phone. She testified that she and her mother recognized the number on the call display as Dr. Yaghini's. She took a photograph of the telephone display, which showed that the call had been received on a date in May 2012. Patient A testified that the date on the phone was likely incorrect as her parents were not good at setting the dates on electronic equipment. Counsel for Dr. Yaghini showed Patient A a police occurrence report that confirmed the phone call was made on that date in May 2012. Patient A then agreed that the call did take place on that date, and that she had been guessing when she said that the date on the phone was wrong.

Dr. Yaghini testified that he asked his clinic staff to follow up with Patient A a couple of weeks after the April 2012 clinic appointment. His reason was that the follow-up for her medical problem had not been completed and he wanted to ensure it was. He testified that he did not think it would be upsetting for Patient A or her mother to receive a call from his office since he had not done anything wrong, and continuing her care was important.

Patient A testified that she made a further complaint to the police in March 2013. In that complaint, she alleged that Dr. Yaghini called her at work and asked some questions of her in a thick accented voice about whether or not she was alone, and that he had correctly indicated which grade she was in at school. She testified that she hung up the phone. She told the police that she recognized the voice and was sure that it was Dr. Yaghini's voice. She made an accusation to the police about him calling her at work and making her uncomfortable. Patient A and her mother also called the College to report the phone call, and Patient A was interviewed again by the College investigator. Patient A told the investigator she was 100 percent certain it was Dr. Yaghini who had called her.

Patient A admitted at this hearing that she had never spoken on the phone previously with Dr. Yaghini and did not know what his voice sounded like on the phone. Patient A testified that although she was 100 percent certain at the time she spoke to the investigator that it was Dr. Yaghini who called her, now that she is older, she realizes that she should not have said she was 100 percent certain.

Patient A acknowledged that at the time of her complaint about the March 2013 telephone call, both she and her mother were upset that the police had elected to not press charges against Dr. Yaghini, but the police had explained to her and her mother why they could not press charges, and she and her mother understood.

Dr. Yaghini denied making any subsequent call to Patient A in March 2013. He testified that he never spoke with her on the phone. Dr. Yaghini specifically denied that he ever called Patient A at her place of work in March 2013.

## **THE LAW**

The civil standard of proof on the balance of probabilities applies in professional misconduct proceedings, according to the Supreme Court of Canada in *F.H. v McDougall*. The College must establish that it is more likely than not that the alleged misconduct occurred. The Committee recognizes that it is the College's burden to prove the allegations and that it is not Dr. Yaghini's burden to disprove them. In all civil matters, regardless of the nature of the allegations, the evidence must be clear, cogent, and convincing in order to satisfy the balance of probabilities test.

There are two allegations of professional misconduct in this case. The first is sexual abuse of a patient. Sexual abuse of a patient by a member of the College is defined in subsection 1(3) of the *Health Professions Procedural Code*, being Schedule 2 to the RHPA, as follows:

(3) In this Code,

“sexual abuse” of a patient by a member means,

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

Subsection 1(4) of the Code states that for the purposes of subsection 1(3), “sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

In determining whether touching, behaviour, or remarks are of a “sexual nature,” the Committee may consider principles articulated by the Supreme Court of Canada in *R. v Chase*, [1987] 2 S.C.R. 293, with respect to the criminal offence of sexual assault. The test to be applied is an objective one: “Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer.” The Committee may consider the body part touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act and all other circumstances surrounding the conduct. Whether the alleged perpetrator derived sexual gratification or had a sexual purpose is a relevant factor, but the absence of a sexual motivation would not necessarily preclude a finding that the behaviour in question was sexual in nature.

The second allegation of professional misconduct is of disgraceful, dishonourable, or unprofessional conduct. The elements of sexual abuse and disgraceful, dishonourable, or unprofessional conduct are different, and there can be a finding of misconduct on both grounds arising from the same set of facts if the different elements of each allegation are proven. The Committee can also find that a physician’s actions or remarks amount to disgraceful, dishonourable or unprofessional conduct if it is not satisfied that an objective observer would find a sexual element in the actions or remarks.

### **Assessment of Credibility and Reliability**

The Committee must assess both the credibility of each witness and the reliability of their testimony. Credibility refers to the witness’ sincerity and willingness to speak the truth as he or she believes the truth to be. Reliability relates to the witness’ ability to accurately observe, recall and recount the events in issue. That is, the witness’s honesty must be assessed along with whether his or her evidence is reliable or can be counted on to be accurate.

The Committee is aware that there is no legal requirement that a complainant's testimony be corroborated.

There is no rule governing when inconsistencies in a witness's evidence will render the evidence not credible or reliable. When assessing the credibility of the witness, inconsistencies on minor matters or matters of detail are normal and are to be expected and must be considered when weighing all of the evidence. The Committee must not consider a witness's evidence in isolation, but should consider all of the evidence and assess the impact of the inconsistencies on the witness's credibility and reliability as it pertains to the core issue in the case.

## **DECISION**

After scrutinizing the testimony given by the two witnesses and having regard for the totality of the evidence, for the reasons that follow, the Committee finds that that the College has proven both allegations of professional misconduct against Dr. Yaghini to the requisite standard.

### **Reasons for Decision**

In making its findings, the Committee considered all of the circumstances including the plausibility of the version of events of the two witnesses and the respective credibility of Patient A and Dr. Yaghini.

The description given by Patient A of Dr. Yaghini's conduct and remarks toward her during the examination that he performed at his clinic on the date in April 2012 is irreconcilable with that given by Dr. Yaghini.

### **Plausibility**

In the Committee's view, there is a compelling thread of logic in the unfolding of events as described by Patient A. The same cannot be said for Dr. Yaghini's description.



The Committee finds plausible, gives weight to, and accepts the description of events given by Patient A, and not Dr. Yaghini's description of events, for the following reasons:

- Patient A's recollection of the kiss on the cheek and an attempted kiss on the lips was clear and consistent;
- If Dr. Yaghini was an estimated twelve inches away from Patient A when he examined her face as he testified, there is no way that Patient A would have misapprehended a kiss on the cheek or an attempt to kiss her on the lips. It is also improbable that such a position would in any way have made her feel uncomfortable;
- Had Dr. Yaghini been that distance away, there would also have been no reason for him to apologize to Patient A, as he testified he did. Having perceived that something was wrong, it would have made more sense for Dr. Yaghini to have asked Patient A what was wrong. It is quite clear from Dr. Yaghini's evidence that, even that day, he knew why Patient A felt uncomfortable;
- Dr. Yaghini admitted that he had a habit of using over-familiar comments with patients. He made such a comment to Patient A at the first April 2012 appointment. His evidence was clear, and he gave examples of compliments he would give to patients. In light of this, it is entirely plausible that he would have said to Patient A on the second April 2012 appointment, something like she was "pretty" or "very pretty," and that she reminded him of a girl he had dated or a former girlfriend;
- The fact that Dr. Yaghini cupped Patient A's face, whether with one or both hands, and came very close to her, combined with his over-familiar and inappropriate comments, introduced an intimacy during a professional encounter that was inappropriate. This added to the plausibility of Patient A's evidence that Dr. Yaghini kissed her on the cheek and attempted to kiss her on the lips;
- Further, in this context of intimacy and over-familiarity, it is also plausible that Dr. Yaghini would have told Patient A that he was excited, in an effort to explain his behaviour;

- Patient A's actions, which included pulling away after the alleged kiss (a fact that was not disputed), and leaving the waiting room abruptly after the appointment, were consistent with her version of events and was in keeping with what reasonably may have been expected of a teenage girl who experienced such an encounter; and
- The fact that Patient A broke out crying on the way home from the first April 2012 visit, causing her friend to ask what was wrong, and that she cried again while telling her mother what had transpired with Dr. Yaghini, while not determinative, is all consistent with her having undergone a very upsetting encounter with Dr. Yaghini.

The Committee did not find any basis to conclude that Patient A fabricated her story or misapprehended what happened to her. In the context of the above, Patient A's account of being scared and uncomfortable makes sense. She was a teenage high school student who came across to the Committee as naïve. She reported what happened in Dr. Yaghini's office immediately to her mother, which triggered the events that followed, namely the reports to the police and the College.

Patient A's description of her experience of Dr. Yaghini kissing her on the cheek and trying to kiss her on the lips was consistent in both her evidence-in-chief and cross-examination.

Dr. Yaghini attempted to minimize the events with Patient A, estimating that he was a foot away from her and implying that the comments he made were somehow acceptable. The Committee found that his version of events did not make sense and did not explain Patient A's degree of upset or the unfolding of events which followed.

### **Credibility of Patient A**

The Committee found this well-presented young woman to be clear in giving her evidence. She was plain-spoken and direct in her responses. Patient A made an effort to give her evidence as accurately as she could and asked questions when she was unsure.

She appeared to be a good observer. She came across as unsophisticated and naïve. Patient A appeared visibly upset only when describing how she felt at the time of the alleged actions. She was self-assured for the most part and readily admitted to being very nervous in the witness box.

Patient A had clear and consistent recall of the specific core issues. Her memory of the events with the exception of some details (which will be addressed later) was good. Any inconsistencies in her evidence seemed genuinely caused by confusion, misunderstanding, or an understandable lack of precise recollection of details.

Examples of her honesty when responding in cross-examination follow:

“Q. You can’t recall all of the specific words you used or the doctor may have used during the appointment? Is that fair?”

A. Yes, that’s fair.”

And later when asked if she could take the Committee step by step through everything that happened at the visits:

“A. No I can’t.”

When it was suggested that the second meeting in April 2012, when Patient A was accompanied by her mother, was three to four minutes, Patient A initially said “no.” When she was asked about this again, she said, “You know, you may have been right. Sorry, I was not- I should have asked you to repeat.”

When she was asked about whether the phone call from Dr. Yaghini’s office occurred the day after the second April 2012 appointment, Patient A said that she “could not be completely sure of the date.”

The Committee found no motive or bias in Patient A’s testimony. She readily agreed that both she and her mother were upset that the police did not pursue her complaint. Whether this in any way caused her to complain to the College is immaterial. Patient A stands to gain nothing from this proceeding. The Committee does not accept that the fact that

Patient A and her mother were upset that the police did not take action indicates any form of bias in this proceeding.

The Committee found that Patient A gave her responses to the best of her ability, even when they conflicted with earlier evidence. Her honesty in this respect is notable. The Committee found her to be forthright and her evidence on the core issues to be consistent. The Committee finds her to be an honest and credible witness.

Reliability is a different concept, and the Committee accepts that Patient A described details in ways that showed minor inconsistencies between her evidence before the Committee and previous versions, and to some extent between her evidence in-chief and under cross-examination. The Committee does not accept that such discrepancies undermine her evidence on the central issues to be decided. The Committee accepts that in a number of instances, Patient A professed certainty and then, on being pressed, she admitted uncertainty. The Committee interprets this as simply illustrating that there are limits to what details any witness can recollect. The cross-examination was astute and proper. However, in none of the examples which follow did the evidence Patient A gave on the core issues in this matter vary.

The Committee accepts that the reading of Patient A's previous statements to the OPP and College may have influenced her memory or jogged her mind as to certain details. The Committee does not agree that this renders her evidence unreliable. In particular, in regard to the core events at issue, the Committee found that Patient A's evidence was clear, consistent, and unwavering.

Patient A was subject to exacting cross-examination and she became a little flustered when answering questions regarding details which were repeatedly asked. Patient A asked questions when she was confused, not in order to obstruct, but in order to be certain about what counsel was asking her. She accepted and explained the inconsistencies in her evidence to the Committee's satisfaction.

### **Minor Inconsistencies**

- “pretty” or “very pretty”

The alleged inconsistency here does not relate to whether such a comment was made, but at what exact point during the first April 2012 examination it was made. Dr. Yaghini does not dispute that he may have made such a comment.

In her examination-in-chief, Patient A testified that after Dr. Yaghini came into the examining room, “he looked at me, and he told me that I was very pretty”. On cross-examination, she agreed with counsel for Dr. Yaghini that this was “before the examination had taken place” and that “(a)t no point during the physical examination when the doctor was looking at [her] spots” did he make any comments about her appearance. However, in her May 2012 statement to the College investigator, she said, “He was just looking at the spots and he looked up and said, ‘You’re very pretty,’ and that was it”. Patient A agreed with counsel that what she had meant by that was that the comment by Dr. Yaghini occurred “during the examination”. She also agreed with counsel that her statement to the College investigator was the correct summary of what happened, and that Dr. Yaghini’s comments were made “during the physical examination when he’s looking at the spots”. In an interview to the police on the date of the alleged incident, she said “...he just kind of came in and started talking to me...He said, ‘You’re very pretty’.” In the same interview, she also said “He came in and checked me over for the spots...Again said that I was very pretty”, as well as “He just kind of came in and started talking to me...He just said ‘You’re very pretty.’” She agreed with counsel for Dr. Yaghini that she was trying to convey to the police that the doctor’s comment had been made at the outset of the appointment.

In the view of the Committee, the fact that Patient A said at different times that the comment was made during the examination or the physical examination, or before the examination at the outset of the appointment, is not important. Patient A was not questioned on her understanding of what an examination consisted of, or of when the physical examination began. In any event, whether Dr. Yaghini made this comment during or at the commencement of the examination is of no importance.

Ultimately, Patient A agreed that given that four years had elapsed since the incident, she needed to go back to her statements to recall the context for the comment. The Committee did not take from this that there was any problem with her memory for events. Rather, the Committee found that this was an honest answer from a young woman who recognized that her recall of events of four years earlier may not have included exactly everything that Dr. Yaghini did or said or when he did or said them.

- Words to the effect that “she looked like a woman he had dated” or that he was “excited”

Patient A testified that on her second April 2012 visit, Dr. Yaghini told her that she reminded her of a woman he had dated. Patient A said she was certain that he had said this because it stuck in her mind. When she was asked about whether he had used those specific words, Patient A at first said yes, and then later clarified that they were words “to that effect.”

What Patient A conveyed consistently was that Dr. Yaghini left her with the understanding that she reminded him of a former girlfriend. Neither the exact words nor the exact time they were made are critical. As with any witness, given the passage of time and the frailty of human memory, there will often be blurry areas where the witness does not have exact recollection.

For the same reason, the Committee attached little weight to the fact that Patient A omitted these words from her earlier accounts, made at or closer to the time of the events in question.

### **Timing of the Events at the second April 2012 Appointment**

Patient A and Dr. Yaghini disagreed in their evidence about what time the second April 2012 appointment started and how long it lasted.

Patient A thought that the appointment at the clinic took over five minutes and maybe even lasted up to ten or fifteen minutes. She agreed that she dictated a note to her friend, which she subsequently provided to College investigators, stating that she arrived at Dr. Yaghini's clinic at 3:00 p.m. for a 3:20 p.m. appointment, and that she left the clinic at 3:25 p.m. The Committee gave the note little weight. Patient A did not recall the note until she was confronted with it on cross-examination. She was scared and upset at the time she dictated it, and there was no evidence about how the time was ascertained or indeed anything else about how the note was generated. The Committee accepted Patient A's explanation that the time she noted may have been an estimate as her mother was unable to come with her since she was picking up her little brother from school.

Dr. Yaghini pointed to his electronic medical record, which he opened at 3:29 p.m. He testified that he opened this record at the beginning of the visit. He also pointed to the fact that his next patient record was opened at 3:37 to suggest that the appointment with Patient A could not have lasted as long as she said it had.

When it was put to Patient A that the appointment started at 3:29 p.m. as shown on the medical record as the time the file was opened, she did not agree. She also denied the suggestion that Dr. Yaghini began typing on the computer when he first came into the examination room. She said that when Dr. Yaghini came into the room, he asked her questions and examined her, and this took two to four minutes. Later, she said it was probably fair to say that the time from when Dr. Yaghini entered the room to when he began to type was five to seven minutes. Patient A testified that Dr. Yaghini did not sit at the table to type until the end of the appointment. This was a distinct memory for Patient A. Patient A's evidence that Dr. Yaghini was typing toward the end of the appointment finds some echo in Dr. Yaghini's testimony that when he sat down after Patient A had pulled away from him, he started to type the findings of his examination.

The Committee accepts that Dr. Yaghini saw Patient A sometime between 3:00 and 3:30 p.m. on the date of the second appointment in April 2012. One cannot conclude simply because the next patient's record was opened at 3:37 p.m. that the appointment with Patient A started at 3:29 p.m. and was brief. While Dr. Yaghini described his general

practice when seeing a patient, the history in Patient A's case was straightforward and short, and did not obviously require contemporaneous recording. Indeed, Dr. Yaghini testified that because Patient A was not his patient, the chart that his staff used consisted of only one sheet which contained the patient's name, other information, and the reason the patient was there. Furthermore, Dr. Yaghini testified that he only partially remembered her sitting there and he could not remember all the details.

Any dispute about the length of the appointment or the precise timing of when the EMR was opened in the context of Patient A's visit does not impact on her credibility or the core issues to be decided.

### **Whether arms and legs were examined**

Much was made of Patient A's testimony that Dr. Yaghini did not examine her arms and legs at the second appointment in April 2012 visit when, in an earlier statement, she had indicated he did. Patient A then testified she could not recall one way or the other. This is drawing a distinction where there is no difference. Patient A was clad in shorts and tee shirt, and her complaint was a rash. The rash is something that presumably would have been apparent to Dr. Yaghini upon his entry to the examination room, and may or may not have been perceived by Patient A. To suggest that Patient A could tell whether Dr. Yaghini was examining her while he was looking at her is simply unfair. It is not a distinction Patient A could reasonably have made, and is irrelevant. This apparent contradiction in Patient A's evidence simply illustrates in the Committee's view the confusion which can result when the limits of memory are probed for this kind of detail.

### **"Puckering"**

The word "puckered" was first used by counsel for Dr. Yaghini in cross-examination. Patient A agreed that Dr. Yaghini's lips were puckered when he leaned in to kiss her on the mouth, but she then had to ask exactly what the word meant. It is unfair to put words in a witness's mouth and then, when the precise word does not appear in a prior



statement, set the witness up for an inconsistency or embellishment. This can hardly be seen as embellishment of Patient A's evidence and should be given no weight at all.

### **Date of the Follow-Up Phone Call from Dr. Yaghini's office**

The Committee accepted Patient A's testimony that she could not be completely sure of the date of a telephone phone call from Dr. Yaghini's office after the second appointment in April 2012. Patient A recalled that it was within a few days of the visit. The date shown on the photograph of the telephone was on a date in May 2012, but Patient A thought it was likely incorrect because her parents were not good at attending to details such as programming the correct time and date on their telephone. When she was shown a police report of that same date in May 2012, Patient A agreed that, in fact, the date was correct. The Committee took from her evidence that Patient A assumed the date on the telephone was wrong because her parents were notorious for not programming the correct date into home electronics. The Committee accepted this as reasonable and found that it does not diminish the strength of her evidence.

### **Telephone Call in 2013**

In regard to a telephone call Patient A received at work in March 2013, she initially told the College investigator that she was 100 percent certain that this call had come from Dr. Yaghini. When she was asked about this on cross-examination at this hearing, she freely acknowledged that she now knew it was impossible for her to have been so certain. The Committee accepted her response as reasonable. This has no impact on the issues to be decided.

### **Other Inconsistencies**

Dr. Yaghini emphasized the following two alleged inconsistencies as particularly important:

### **1. Whether Patient A Pulled Back Once or Twice**

One of the points upon which Dr. Yaghini relied to attack the reliability of Patient A's evidence was that she gave conflicting statements about whether she pulled back only once when Dr. Yaghini tried to kiss her on the lips, or twice (both then and after he kissed her cheek).

In examination-in-chief, Patient A testified that she pulled away twice. On cross-examination, she testified that she remembered pulling away slightly the first time and harder the second. When counsel for Dr. Yaghini revisited this, Patient A testified that she pulled away from Dr. Yaghini after the kiss on the cheek, and that she "more jerked her body to the opposite side." Patient A agreed with counsel's description that this was a short jerky movement, and that she then pulled away again when he tried to kiss her on the lips. Patient A testified that Dr. Yaghini then apologized and told her again that she was pretty.

During further cross-examination, counsel for Dr. Yaghini put to Patient A that initially, she had not really been sure what happened after she felt the sensation on her cheek. Patient A disagreed, saying "no, that is not correct." Patient A was pressed so hard during cross-examination about whether she had changed her story about pulling away after she felt the sensation on her cheek, that she became confused. Patient A eventually agreed that there was a difference between her testimony and her prior statements, in that she had previously omitted saying to either the OPP or the College investigators that she pulled back after the kiss on the cheek.

Again counsel for Dr. Yaghini put to Patient A that she did not have a clear recollection of pulling away after she perceived a kiss on the cheek. This time, Patient A responded, "Correct." The extent or degree that Patient A may remember pulling back was not addressed any further. After repeated questioning, she agreed that she did not clearly recollect. She was a young woman, inexperienced with being cross-examined, and clearly tired from exhaustive and repetitious questioning.

The Committee did not consider that the fact Patient A provided the added detail about pulling away twice during her testimony, but did not mention it during the OPP or College investigations, undermined her evidence. The Committee found that it is more probable than not that Patient A did pull back twice as she repeatedly described, both after the kiss on the cheek as she testified, and when Dr. Yaghini tried to kiss her on the lips. Doing so would have been an instinctive reaction to what had just happened. The Committee found nothing to support any suggestion that she embellished or fabricated her story.

The Committee disagreed with Dr. Yaghini's submission that Patient A's evidence on this point impacts the core issues of this case. Patient A's evidence on whether Dr. Yaghini kissed her on the cheek and tried to kiss her on the lips was consistent, clear, and compelling. The Committee did not accept that Patient A misapprehended Dr. Yaghini's actions, and it found her evidence on the core issues to be reliable.

## **2. Statement to the OPP that She Was Unsure**

Patient A was directly questioned on the substance of the following comment she gave in her report to the police: "and then he cupped my face in his hands, and he kissed my cheek. I wasn't really sure about that and I was a little bit nervous."

Patient A explained consistently that when she said she was "not sure about that," she did not mean that she was unsure of whether the kiss happened. She told counsel for Dr. Yaghini that he was using the wrong emphasis on that sentence in the report: "I meant I wasn't really sure how I felt about him kissing my cheek... I wasn't really sure about how I felt at that moment. I was scared and nervous, but I wasn't really sure how nervous I should be." She repeated again that the way in which counsel for Dr. Yaghini was attempting to portray what she meant was wrong. The Committee found her explanation of what she meant to be credible, and disagreed that this undermines her credibility or reliability.

In the Committee's view, neither of the above points, nor the aforementioned minor inconsistencies, undermined Patient A's evidence on the core issues. Nor do they lead the Committee to believe that Patient A misapprehended what happened to her. On the core issues of whether Dr. Yaghini kissed her on the cheek and then attempted to kiss her on the lips, Patient A was steadfast and the Committee found her evidence in this respect to be reliable.

### **Credibility of Dr. Yaghini**

Dr. Yaghini also presented well. He spoke clearly and was direct in his responses to questions from counsel. He had no difficulty with speaking or understanding English, notwithstanding his evidence early in his examination-in-chief that he was only partially fluent in English and that he had issues from time to time in understanding things that were said to him in English.

Dr. Yaghini testified in chief that he did not remember saying to Patient A that she was pretty during the second appointment in April 2012. On cross-examination however, he acknowledged that he might have called her pretty during this visit, and that in his initial response to the College, he apologized to her for making a comment on her appearance, which may have made her uncomfortable. While the Committee does not place great weight on this apparent contradiction, this comment provides some evidence of Dr. Yaghini's minimization of his actions, which is described further below.

Dr. Yaghini testified about the return to his office on the date of the second appointment in April 2012 by Patient A, along with her mother. Dr. Yaghini testified that as soon as he heard the mother ask why he had tried to kiss her daughter, and saw Patient A next to her, he knew the reason they had come, which was "that event that she felt uncomfortable." The Committee considered it noteworthy that he knew immediately why the mother was there, and why she was alleging that he had tried to kiss Patient A. The Committee concluded that Dr. Yaghini attempted to minimize his actions before the Committee by

testifying that what made Patient A uncomfortable was, “I thought maybe she think I’m getting too close.”

Dr. Yaghini was questioned on how close he was to Patient A. He testified that he could not remember, and then estimated twelve inches or a foot. Again, he reiterated he that he could not remember. The Committee found that it was disingenuous for Dr. Yaghini to say he could not recall how close he got to Patient A in view of his admission that it was his closeness to her that made her uncomfortable. Dr. Yaghini knew from the return visit of Patient A and her mother within an hour of the appointment that they were alleging that he had tried to kiss her. Given his belief that this was a misperception caused by his having gotten too close, it is therefore highly unlikely that he would have forgotten how close he had been. The Committee rejected his evidence that he now does not remember how close he was to Patient A.

As for the figure of twelve inches, the Committee understands that this was an estimate and is not precise. However, it is clear that Dr. Yaghini was inferring to the Committee that there was some significant distance between himself and Patient A. As noted above, it is not plausible that Patient A would have been made to feel uncomfortable as a result of Dr. Yaghini examining her face from that distance. Merely being a foot away from Patient A would not have precipitated angry words, a confrontation, and a report to the police. The Committee is of the view that here again, Dr. Yaghini was trying to minimize his actions to the Committee.

The Committee found Dr. Yaghini’s evidence on the issue of how close he came to Patient A to be confused and not credible. At various times, he described himself as being close, too close, or a foot away from Patient A. The Committee found that his evidence on this point simply does not make sense.

Dr. Yaghini testified that the clinical reason for getting in close to examine Patient A’s face was to see if the rash on her face was a “butterfly rash.” However, Dr. Yaghini did

not document this in her chart, nor did he mention that possibility in his response to the College. The Committee therefore ascribes no weight to it.

The Committee does not accept that Dr. Yaghini's outreach to the OPP bolsters the reliability of his evidence. He knew that Patient A and her mother were going to make a police complaint, so his approach to the OPP could just as easily have been a defensive move on his part.

The Committee was troubled by the fact that Dr. Yaghini minimized his interactions with Patient A. The Committee did not consider Dr. Yaghini to be credible, or his evidence to be reliable, on the core issues of kissing his patient on the cheek and trying to kiss her on the lips. His denials, although consistent, were simply not plausible, given all the circumstances.

### **Minor Inconsistencies**

#### **Dr. Yaghini's Response to the College following Patient A's Complaint**

Dr. Yaghini, through his counsel, provided a response to the College regarding Patient A's complaint dated August 17, 2013. In his testimony before the Committee, Dr. Yaghini agreed that this response was accurate. Dr. Yaghini agreed during his testimony that it did not contain any mention of the fact that Patient A was wearing a tight tee shirt during the appointment on the second date in April 2012, or that he had pulled her tee shirt up at the back (something to which he had testified), although it did mention a shirt. Dr. Yaghini also agreed in testimony that the response did not include that he placed his hands on Patient A's face.

Dr. Yaghini's explanation was "Well, the close examination, that was the main things [sic]. I got close to examine her. Again, it tells the sequence of events accurately, but does not have all the details. So, for me, it was correct."

The Committee accepted that details such as these may be omitted from earlier statements and it did not find the omissions to be significant.

### **Whether One or Both Hands Were on her Face**

Dr. Yaghini testified in chief that at no time during the second April 2012 appointment did he have both of his hands at the same time on Patient A's jaw and cheek. Later, when he was cross-examined as to whether he used both hands at the same time, he testified that he could not remember, and that it could be. This is a further example of probing the limits of a witness's memory, and again the Committee attached little weight to the inconsistency.

### **CONCLUSION**

In conclusion, the preponderance of the evidence supports the description of events given by Patient A. Based on the plausibility of Patient A's testimony and its assessment of the respective credibility and reliability of both witnesses, the Committee finds that the events at issue occurred as Patient A has described.

The Committee finds that Dr. Yaghini came close to Patient A and kissed her on the cheek. Then, with his hands on her face and jaw, he tried to kiss her on the lips, just as she testified. This resulted in her feeling scared and uncomfortable as she said she felt, and led to the series of events that followed.

The Committee found Patient A's evidence to have been clear, consistent, and compelling on these core issues. She told the Committee, both in her examination-in-chief and in cross-examination, that Dr. Yaghini kissed her on the cheek and tried to kiss her on the lips. Her version of events, quite simply, makes sense. The Committee found the inconsistencies between the evidence given before the Committee and statements she gave to the police or College investigators either to have been explained to the Committee's satisfaction or to be immaterial.

The Committee is well aware of the standard of proof which applies and concludes that the College has met its burden of proving both of the allegations to the requisite standard.

The Committee further finds that Dr. Yaghini's kiss on Patient A's cheek and his attempted kiss on her lips constitute sexual abuse, as defined in subsection 1(3)(b) and (c) of the *Code*, being touching of a sexual nature of a patient by a member, and behaviour or remarks of a sexual nature by the member towards the patient. Viewed objectively and reasonably, it is obvious that kissing the cheek and then attempting to kiss the lips of a teenage girl in the context of a medical examination is a sexual act that violated the sexual integrity of the victim. The Committee further finds that this conduct is relevant to Dr. Yaghini's practice of medicine and that, having regard to all the circumstances, it would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee finds, having regard to all the evidence, that during the second April 2012 appointment, Dr. Yaghini told Patient A that she reminded him of a woman he had dated or an ex-girlfriend, and, after the attempted kiss on Patient A's lips when Dr. Yaghini apologized to her, he told her he was excited. The Committee finds that these comments constitute sexual abuse, as defined in subsection 1(3) (c) of the *Code*, being behaviour or remarks of a sexual nature by the member towards the patient. The Committee also finds the making of these remarks to a teenage patient in private during a medical examination to be conduct relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

As noted above, the Committee finds that Dr. Yaghini made a comment to Patient A during the first April 2012 appointment that she was pretty or very pretty. It also finds that he made a similar comment to Patient A during the second April 2012 appointment. The making of these comments also constitutes conduct relevant to Dr. Yaghini's



practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

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

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Yaghini,  
2017 ONCPSD 29**

**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. REZA YAGHINI**

**PANEL MEMBERS:**

**DR. P. CHART (CHAIR)  
MR. S. BERI  
DR. P. TADROS  
MR. A. RONALD**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF  
ONTARIO:**

**MS. E. WIDNER**

**COUNSEL FOR DR. YAGHNINI:**

**MR. M. SAMMON  
MR. C. HUNTER**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MR. D. ROSENBAUM**

<b>Hearing Dates:</b>	July 25, 26, and 27, 2016
<b>Finding Decision Date:</b>	December 21, 2016
<b>Penalty Hearing Dates:</b>	March 27 to 29, 2017
<b>Penalty Decision Date:</b>	June 20, 2017

**PUBLICATION BAN**

## **PENALTY DECISION AND REASONS FOR DECISION**

On December 21, 2016, the Discipline Committee of the College of Physicians and Surgeons of Ontario found that Dr. Reza Yaghini committed an act of professional misconduct in that he engaged in the sexual abuse of a patient and has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

The Committee found that during a first appointment with him, Dr. Yaghini made a comment to a high school age teenage patient, Patient A, that she was pretty or very pretty and that he made a similar comment to Patient A during a second appointment. The Committee found the making of these comments to be disgraceful, dishonourable or unprofessional conduct.

The Committee further found that during a second appointment with him, Dr. Yaghini kissed Patient A on the cheek and attempted unsuccessfully to kiss her on the lips during the medical examination. During this appointment, Dr. Yaghini told Patient A that she reminded him of a woman he had dated or an ex-girlfriend and after apologizing to her said that he was excited. The Committee found that the kiss on the cheek, the attempted kiss on the lips and these remarks constituted sexual abuse of a patient and disgraceful, dishonourable or unprofessional conduct.

On March 27 to 29, 2017, the Committee heard evidence and submissions on penalty and costs. The Committee reserved its decision.

## **SUBMISSIONS ON PENALTY**

The College submitted that revocation was the appropriate penalty in this case. The College took the position that revocation is necessary to maintain public confidence in the ability of the College to govern the profession effectively in the public interest and to

effect general deterrence, and is commensurate with the gravity of the case. The College submitted that the integrity of the profession will be irreparably damaged if Dr. Yaghini is permitted to remain a member of the profession.

Dr. Yaghini submitted that a suspension in the range of six months would be a reasonable and appropriate penalty. Dr. Yaghini submitted that a significant suspension will serve the functions of specific and general deterrence and will signal the serious nature of the misconduct, without destroying his livelihood and depriving the community of an otherwise caring physician. He also proposed that he be required, as terms, conditions and limitations on his certificate of registration, to complete the course on Understanding Boundaries in London, Ontario and undergo regular counselling for one year.

The College and Dr. Yaghini agreed that the Committee's penalty and costs order include that:

- Dr. Yaghini be reprimanded, which the Committee notes is mandatory for any finding of sexual abuse;
- Dr. Yaghini post a letter of credit with the College to secure payment of the amount of \$16,060.00 for the fund for patient counselling.
- Dr. Yaghini pay costs to the College in the amount of \$31,500.00.

With respect to the security for payment of \$16,060 to the patient fund for therapy and counselling, Dr. Yaghini submitted that the Committee should place a five-year term limit on the letter of credit. The College disagreed with the imposition of a term limit.

## **EVIDENCE ON PENALTY**

The Committee heard the evidence of Dr. Graham Glancy, a psychiatrist, who was accepted by the Committee as qualified to give opinion evidence in forensic psychiatry. Dr. Glancy carried out a forensic assessment of Dr. Yaghini, including an assessment of future risk. Dr. Glancy's expert report, dated March 15, 2017, and his *curriculum vitae* were marked as exhibits. Dr. Glancy's evidence will be cited where relevant in the discussion below.

The Committee also heard evidence from other witnesses including: four of Dr. Yaghini's patients (Patients B, C, D and E); Ms A B-D, a Registered Practical Nurse (RPN), who worked with Dr. Yaghini; and Dr. J. McCall, a colleague of Dr. Yaghini's; and, as to Dr. Yaghini's character and personal family relationships, Ms S E-K, Dr. Yaghini's wife.

Patient A, the complainant in this matter, read out her Victim Impact Statement, which was also submitted in written form.

A Brief of Letters of Support for Dr. Yaghini from various physicians, patients of Dr. Yaghini, and administrative staff who worked with Dr. Yaghini, was also marked as an exhibit and entered into evidence.

## **PENALTY AND REASONS FOR PENALTY**

### **The Law and Legal Principles**

#### ***Sexual Abuse***

Subsection 1(3) of the Code provides:

- 1 (3) In this Code, "sexual abuse" of a patient by a member means,
- (a) sexual intercourse or other forms of physical sexual relations between the member and the patient,
  - (b) touching, of a sexual nature, of the patient by the member, or
  - (c) behaviour or remarks of a sexual nature by the member towards the patient.

Subsection 1(4) of the Code also provides:

1(4) For the purposes of subsection (3), “sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

Subsection 51(2) of the Code sets out the powers of the Discipline Committee following a finding of professional misconduct. It states:

51(2) If a panel finds a member has committed an act of professional misconduct, it may make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member’s certificate of registration.
2. Directing the Registrar to suspend the member’s certificate of registration for a specified period of time.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member’s certificate of registration for a specified or indefinite period of time.
4. Requiring the member to appear before the panel to be reprimanded.
5. Requiring the member to pay a fine of not more than \$35,000 to the Minister of Finance.
- 5.1 If the act of professional misconduct was the sexual abuse of a patient requiring the member to reimburse the College for funding provided for that patient under the program required under section 85.7.
- 5.2 If the panel makes an order under paragraph 5.1, requiring the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 5.1.

***Orders relating to sexual abuse***

Subsection 51(5) of the Code states:

51(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

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

**Penalty Principles**

The Committee is well aware of the penalty principles which are accepted as applicable in discipline proceedings. Decisions of the Committee refer consistently to these important guiding principles. Protection of the public is paramount. Other relevant principles are: denunciation of the misconduct; specific and general deterrence; the maintenance of public confidence in the integrity of the profession and in the ability of the College to govern the profession effectively in the public interest; and rehabilitation of the member, where appropriate. The Committee also considers proportionality and aggravating and mitigating factors.

These are the principles viewed by the Committee as applying in this matter and their application must serve to achieve overall protection of the public and result in a penalty that is just and appropriate.

### **Aggravating Factors**

#### ***Nature of the Misconduct***

The nature of the misconduct is clearly described in the findings of the Committee in its Decision and Reasons for Decision and at the outset of these reasons.

The basic facts are clear: there was a kiss by Dr. Yaghini on the cheek of a high school age teenage patient during a medical examination, an unsuccessful attempt by Dr. Yaghini to kiss that patient on the lips; and comments which unquestionably had sexual inference, involving a vulnerable patient, a high school age teenager, and a doctor more than 20 years her senior. Dr. Yaghini also made other comments to this patient that the Committee found to be conduct relevant to the practice of medicine that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee views this as serious and egregious misconduct. Not only does such behaviour destroy the trust a patient may have in the medical profession, undermining the doctor-patient relationship, it also severs the trust between adult and child. Patient A put this well in her victim impact statement, which will be referred to later.

Furthermore, this type of conduct reflects on the medical profession as a whole, raising doubts in the public mind as to the true motives of physicians, whom they trust to put patient interests foremost.



*i) Age of the Patient*

The Committee accepts that sexual abuse of a minor is egregious misconduct, regardless of the nature or extent of that abuse. Patient A was a young girl, not yet sixteen, in need of medical care, and was not expecting Dr. Yaghini to make comments about her looks, kiss her on the cheek, or attempt to kiss her on the lips.

*ii) Type of Misconduct*

The sexual acts in this case were a kiss on the cheek, an attempt to kiss on the lips and sexual remarks, which occurred in a medical visit of less than 15 minutes, with one patient. As soon as Patient A reacted, Dr. Yaghini stopped and then apologized. There were also unprofessional remarks in a prior appointment to Patient A regarding her looks.

As will be discussed in more detail below, the Committee accepts that the acts and remarks by Dr. Yaghini's are not as intrusive as those seen in other disciplinary cases where panels have ordered revocation.

**Mitigating Factors**

***Risk Assessment***

Dr. Glancy's report contained a full psychiatric and psychological forensic assessment of Dr. Yaghini. This included a risk assessment. Dr. Glancy based his opinion on a four-hour interview with Dr. Yaghini (January 31, 2017), psychological testing of Dr. Yaghini administered by a psychologist, Dr. M. Kalia, and collateral interviews with Dr. McCall and Dr. Yaghini's wife. Dr. Glancy testified about his report.

In brief, Dr. Glancy found no significant factors in Dr. Yaghini's personal, medical or family history that were relevant. Dr. Glancy reported that Dr. Yaghini has no past

psychiatric history and no significant issues arising from a psycho-sexual history, which was considered normal for his culture. Testing indicated mild depression (BDI-II) and low anxiety (BDI).

There were no cognitive distortions regarding sexual violence both on direct questioning, and using the Bradford Questionnaire. Dr. Yaghini denied sexual impulses, urges, or behaviours involving females under the age of 16. Likewise, there was nothing to suggest anomalous sexual interest or behaviours.

Positive factors, which emerged from the forensic assessment included: no history of substance abuse; no non-sexual criminal behaviour; no relevant past medical or psychiatric history; low testosterone level (of limited usefulness but supportive of a lack of hyper-sexuality); stable family and home; and a normal mental state examination. The Committee was further informed that Dr. Yaghini has been practising now for five years since the date of his misconduct and no similar concerns have arisen.

A battery of psychological test results indicated valid responses, with Dr. Yaghini making no attempt to exaggerate or understate psychological difficulties. Taken together, there was no evidence of personality disturbance, or antisocial attitudes or behaviours.

In his testimony, Dr. Glancy opined that Dr. Yaghini's actions may have been a sudden impulsive act, although he also noted that his assessment did not reveal any pattern of impulse problems from Dr. Yaghini's childhood, and that Dr. Yaghini is not "overly impulsive", and that "makes him more easy to manage in the community".

Dr. Glancy concluded in his report that in his opinion, Dr. Yaghini represents a very low risk of sexual abuse to patients or the public in general. He considered Dr. Yaghini's risk to be at the level of the general population, or of any practising physician. When challenged by College counsel, Dr. Glancy agreed that as a general principle, past behaviour is one of the predictors of future behaviour. However, that did not affect his

opinion that Dr. Yaghini was at no greater risk of reoffending than the rest of the population.

Dr. Glancy recommended no particular psychological or psychiatric treatment for Dr. Yaghini. He did feel that it may be helpful for Dr. Yaghini to repeat the Understanding Boundaries Course, even though Dr. Yaghini had taken this course in 2012. The Committee was informed that Dr. Yaghini has registered to take this course later this spring. Dr. Glancy also was of the view that it may be helpful for Dr. Yaghini to attend counselling (once monthly) over a period of a year in order to discuss any at-risk situations and prevention of any circumstances that could put him at risk in the future.

The Committee accepts Dr. Glancy's conclusions that Dr. Yaghini exhibits a number of favourable factors, which suggest that he poses little risk to patients and the public and that the risk of his re-offending cannot be demonstrated to be measurably above that of the general population. This conclusion leads the Committee to believe that protection of the public can be achieved by measures short of revocation.

### ***Insight***

Dr. Yaghini has undergone an extensive forensic assessment. He told Dr. Glancy that he appreciated the psychological effects of touching a high-school aged teenager sexually would have on her, including effects on future relationships with authority figures, future sexual relationships and post-traumatic symptoms. He told Dr. Glancy that he had attended the boundaries course at Western University in 2012, he is well aware of boundaries and never does a sensitive physical examination without a nurse being present, and he has become more careful about the way he talks to patients.

Even so, the Committee is left with concerns. At all times, Dr. Yaghini was aware that sexual conduct with patients was wrong, and yet he chose to cross the line. Dr. Yaghini did not testify at the penalty hearing, and so the Committee had to rely on untested statements of what he told Dr. Glancy, rather than hearing directly from Dr. Yaghini

about the insight he had attained. He denies the Committee's findings and he maintains that from his perspective, the account of the events he gave under oath was truthful. Dr. Glancy acknowledged on cross-examination that when somebody cannot accept a finding made about him, it does show a lack of insight, although Dr. Glancy believes that Dr. Yaghini has gained insight.

Dr. Yaghini understood that he had made his patient feel uncomfortable and to that extent he, even at the time of his misconduct, had some partial insight that his behaviour was inappropriate.

Based on the above, the Committee accepts that Dr. Yaghini has acquired some degree of insight into his misconduct, and to an extent this is a mitigating factor. However the Committee finds that he still has some way to go in dealing fully with his actions. His level of insight should be enhanced by the remediation that the Committee is ordering.

### ***Character References***

The Committee received a brief of 30 letters in support of Dr. Yaghini. Of these 23 were from former patients, three were from office staff who worked with Dr. Yaghini, and four were from colleagues. As noted above, the Committee also heard evidence from four of Dr. Yaghini's patients, the RPN who worked with him, a colleague, and Dr. Yaghini's wife.

The patients who wrote letters commented consistently on the competency of care they received, the caring and compassion they experienced, and the prevailing professionalism exhibited by Dr. Yaghini. Many of them had been his patients for years and some were aware of the Committee's findings. The letters submitted by office staff and colleagues also described Dr. Yaghini as having a high level of competence and providing diligent, compassionate care. His relationships with other professionals were thoughtful, respectful and appropriate. The four patients who testified said that they had received

knowledgeable, competent and compassionate care from Dr. Yaghini. They were comfortable with him, and found his manner to be professional, supportive and caring.

This evidence paints an overall picture of a physician who is valued by his community. The Committee was impressed with the evidence of Dr. McCall, a colleague who seemed to know Dr. Yaghini well. Dr. McCall is a seasoned and respected physician in her community. She testified that she helped to orient Dr. Yaghini when he first came to practise in the community. He engaged well, was cheerful and made a good impression. She testified that she found him warm, caring and compassionate. Lastly, the RPN who worked with Dr. Yaghini described him in her testimony as pleasant, polite and courteous.

The Committee is aware of the limitations of character evidence. As other panels of this Committee have noted, character references are of limited utility in a case involving sexual abuse of a patient, where the conduct takes place in private and has little connection to the external persona of the perpetrator. That said, the Committee noted the pervasive positive comments, which illustrate how Dr. Yaghini is perceived by his community. Many of the characteristics attributed to him are among those recognized by the profession as desirable in a family doctor. The Committee concluded that this was a mitigating factor, albeit a limited one.

## **CASE LAW**

Both parties brought considerable case law before the Committee. The Committee recognizes that it is not bound by prior decisions of the Discipline Committee. However, part of the diligence required in arriving at an appropriate penalty includes an assessment of the range of penalties imposed in similar cases.

The Committee considered a number of cases where revocation had been ordered.

In *College of Physicians and Surgeons of Ontario v. Minnes*, 2015 ONCPSD 3, the Committee made a finding of disgraceful, dishonourable or unprofessional conduct in relation to highly intrusive sexual acts, including genital fondling, of a 17 year old girl, who was not a patient, and unwanted touching of female hospital staff.

In *College of Physicians and Surgeons of Ontario v. Noriega*, 2016 ONCPSD 29, the sexual acts were extremely offensive, involving masturbation of a 15-year old patient, under the guise of a medical examination, resulting in a finding of sexual impropriety and revocation.

The sexual misconduct perpetrated in these two cases was shocking. The Committee cannot and does not equate the sexual acts in these cases to the misconduct which the Committee has found that Dr. Yaghini committed.

In *College of Physicians and Surgeons of Ontario v. Marshall*, 2016 ONCPSD 31, the Committee made findings of having been found guilty of an offence relevant to suitability to practice and disgraceful, dishonourable and unprofessional conduct. This case involved a pediatrician who was criminally convicted of a serious sexual assault of a boy who was 15 or 16 years old at the time and not a patient. The circumstances of this case are so distinguishable that the Committee did not find it helpful.

The Committee considered other cases where a penalty other than revocation was held to be the appropriate penalty.

In *College of Physicians and Surgeons of Ontario v. Marks*, 2012 ONCPSD 13, the findings were of hugging and kissing three patients in a psycho-therapeutic setting. There was a plea of no contest and a joint submission on penalty, which the Committee accepted and ordered a suspension of four months and practice restrictions, including video monitoring of patient encounters, written notice to patients of the Committee's order, instruction in ethics and boundaries, and a reprimand.

In *College of Physicians and Surgeons of Ontario v. Muhammad*, 2013 ONCPSD 23, in which there was also a joint submission on penalty, the findings included making sexual comments, hugging and kissing, and attempting to kiss a patient who was in her early 20's. A two-month suspension was ordered, as well as instruction in communications, payment to the patient fund for therapy and counseling and a reprimand. A mitigating factor considered by the Committee was character evidence indicating that the doctor had a good reputation in the community and was respected by his patients.

While the sexual acts in these cases more closely resemble the findings made in Dr. Yaghini's case, the cases are distinguishable. Neither of the above cases involved a patient who was a minor and in both of cases, a joint submission on penalty was made by the parties and accepted by the Committee.

Other cases cited instances of less intrusive sexual acts where the behaviour was repeated, or in the context of a psychiatric relationship, and where panels of the Discipline Committee had imposed suspensions of two to six months. In none of these cases, however, was the patient a minor.

## **VICTIM IMPACT STATEMENT**

In her victim impact statement, Patient A expressed in detail the disruption that occurred in her life after her visit in April, 2012 with Dr. Yaghini. She described how she felt that Dr. Yaghini's actions had caused her to lose confidence, friends and trust and faith in people, and to make her feel unsafe.

Patient A's victim impact statement puts squarely before the Committee the significant impact of sexual abuse on patients, their families and society. Disruption of relationships, destruction of the trust in medical and allied professionals, and the hesitancy to seek care when it is needed are significant negative consequences the enduring nature of which, in the case of Patient A, speaks volumes as to the impact of sexual abuse on society.

## CONCLUSION

Dr. Yaghini's misconduct in this case does not fall within the sexual acts in subsection 51(5)(2) of the Code that result in mandatory revocation. Revocation is not mandatory in every case of sexual abuse, but is discretionary in cases where it is not. The issue is whether it is the appropriate penalty in this case. The panel hearing all the evidence and weighing the circumstances of the case before it has the discretion to decide whether revocation or a lengthy suspension is the appropriate penalty.

The Committee is unanimous in condemning the behaviour exhibited by Dr. Yaghini and in stating firmly that such behaviour is intolerable. However, it does not necessarily follow that revocation is the appropriate penalty. Revocation of a member's certificate of registration is the maximum penalty that the Committee can impose. Revocation would carry with it a prohibition against applying for reinstatement for five years. Before imposing this penalty, the Committee must be satisfied that the facts, circumstances and penalty principles justify it. The Committee must make a thorough review of all the relevant facts and circumstances, assiduously weigh all the evidence before it, the findings made, the victim impact statement, the submissions of both counsel, and the advice of its independent legal counsel. It must have regard to all relevant penalty principles. No single factor should be considered in isolation. The Committee sees it as its duty to come to a penalty decision, which is fair, principle-based and commensurate with the misconduct.

The Committee concluded, after review of all the relevant issues as outlined in the above discussion, all of the evidence and the submissions of counsel, that revocation is not appropriate or required in this matter. In the Committee's view, specific and general deterrence are achieved in the specific circumstances of this case by imposing a substantial suspension, a public reprimand, and terms, conditions and limitations on Dr. Yaghini's certificate of registration.



The Committee does not accept that, in this case, revocation is required to preserve the reputation and integrity of the profession. The findings of misconduct against Dr. Yaghini involved remarks, a kiss on the cheek and a thwarted attempt to kiss on the lips. The misconduct has never before been the subject of a finding against Dr. Yaghini and has never recurred. Based on the evidence, there is the ability to protect the public and the opportunity for Dr. Yaghini to address his behaviour through counselling and a course on understanding and maintaining boundaries.

The Committee also does not accept that, in this case, revocation is required in order to maintain the confidence of the public in the ability of the College to govern the profession effectively in the public interest. The Committee is of the view that public confidence is maintained when the public sees reasoned and fair decisions emanating from regulatory bodies.

Public protection is achieved when risk is minimized. The Committee has uncontroverted expert evidence that Dr. Yaghini does not pose any measurable risk to patients or the public. The Committee also has evidence that there have been no similar problems with Dr. Yaghini's conduct in the five years since the misconduct that would cause concern.

After careful consideration of the many relevant issues bearing on penalty in this matter, and the applicable penalty principles, the Committee has concluded that a nine-month suspension of Dr. Yaghini's certificate of registration is an appropriate sanction. This is longer than the six-month suspension for which Dr. Yaghini advocated, and it is outside the range of the cases that he put forward. However, the Committee finds this is an appropriate length as the degree of seriousness of the misconduct is enhanced by the fact that the patient was a minor.

The Committee is of the view that a nine-month suspension is a very serious penalty that will send a clear message both to Dr. Yaghini and to the profession that misconduct of the type committed by Dr. Yaghini will not be tolerated. As such, it will serve the principles of denunciation of the conduct and specific and general deterrence. The

imposition of such a lengthy suspension will also serve to maintain public confidence both in the ability of the College to govern the profession effectively in the public interest and in the integrity and reputation of the profession.

Dr. Yaghini will also be reprimanded as is required by subsection 51(5) of the Code.

In addition, as recommended by Dr. Glancy in his report, the Committee will impose terms, conditions and limitations on Dr. Yaghini's certificate of registration that he take the Understanding Boundaries course, as he has indicated he intends to do, and that he participate in a course of counselling on a once-monthly basis over the course of one year, as envisioned by Dr. Glancy. These terms and conditions will serve to protect the public by giving him an opportunity to reflect further and gain additional insight into his behaviour.

The Committee also concluded that this was an appropriate case in which to order Dr. Yaghini to pay costs of the hearing to the College in the amount of \$31,500.00, pursuant to section 53.1 of the Code.

### **Funding for Therapy and Security to Guarantee Payment**

Because this Committee has made a finding that Patient A was a patient when she was sexually abused by a member, she is eligible, under subsection 85.7(4)(a) of the Code, to receive funding under a program established by the College to pay for any therapy or counselling that she undertakes.

Subsection 85.7(10) specifies that funding may be used to pay for therapy or counselling that was provided at any time after the sexual abuse took place. The maximum amount of funding to which Patient A is entitled is \$16,060, which is what OHIP would pay for 200 half-hour sessions of individual out-patient psychotherapy with a psychiatrist, on the day she becomes eligible under subsection 85.7(4) (\$80.30 per session). This is pursuant to

subsection 1(a) of Ontario Regulation 59/94(O. Reg. 59/94) under the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Because the Committee found that Dr. Yaghini had sexually abused a patient, it may order Dr. Yaghini under subsection 51(2)(5.1) of the Code to reimburse the College for any funding provided for Patient A's therapy under the program and it may order him under subsection 51(2)(5.2) of the Code to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order made under subsection 51(2)(5.1). The Committee agreed that this was an appropriate case in which to make orders under subsection 51(2)(5.1) and (5.2) of the Code.

There was an issue between the parties as to the length of time that the security that is ordered under subsection 51(2)(5.2) should have to be posted. The College submitted that there should be no time limit. Dr. Yaghini took the position that the security should only have to be posted for five years from when Patient A would have first become eligible to receive funding, which was December 21, 2016, when the Committee made its finding.

Subsection 1(b) of O. Reg. 59/94 states:

- 1(b) The period of time within which funding may be provided for a person in respect of a case of sexual abuse is five years from,
- (i) the day on which the person first received therapy or counselling for which funding is provided under subsection 85.7 (10) of the Code, or
  - (ii) if funding is not provided under subsection 85.7 (10) of the Code, the day on which the person becomes eligible for funding under subsection 85.7 (4) of the Code.

The Committee is not aware of whether Patient A has sought funding under section 85.7 of the Code. As noted above, Patient A is eligible under subsection 85.7(10) to seek funding for therapy that is provided at any time in the future. The wording of the

regulation is not very clear, but pursuant to subsection 1(b)(i) of O. Reg. 59/94 above, the five years could start to run on the day she first started the therapy. As there is no way of knowing if or when that will be, the Committee decided not to impose a time limit on the posting of security.

## **ORDER**

Therefore, the Committee orders and directs that:

1. the Registrar suspend Dr. Yaghini's certificate of registration for a period of nine months, to commence on the date this decision is released;
2. the Registrar impose the following terms, conditions and limitations on Dr. Yaghini's certificate of registration:
  - (a) Dr. Yaghini attend the Understanding Boundaries Course in London, Ontario within six months of the date of this Order;  
and
  - (b) Dr. Yaghini participate in a counselling program acceptable to the College to consist of counselling once per month, for a period of one year, which includes enhancing of insight, identification of any at-risk situations and prevention of circumstances that could put him at risk in the future.
3. Dr. Yaghini reimburse the College for funding provided to Patient A under the program required under section 85.7 of the Code, and shall post an irrevocable letter of credit or other security acceptable to the College to guarantee payment of such amounts within 30 days of the date of this Order, in the amount of \$16,060.00.

4. Dr. Yaghini appear before the Committee to be reprimanded within 30 days of the date this Order becomes final;
5. Dr. Yaghini pay costs to the College in the amount of \$31,500.00, within 30 days of the date of this Order becomes final.