

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Brian Christopher Thicke, this is notice that the Discipline Committee ordered there shall be a ban on publication of the names and any information that could disclose the identity of complainants and patients referred to orally or in the exhibits filed at the hearing, except Patient A, Lisa Fruitman, Patient H, Miryana Golubovich, Complainant L, Cheryl Thorpe, under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

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

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Thicke,
2019 ONCPSD 55**

**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. BRIAN CHRISTOPHER THICKE

PANEL MEMBERS:

**DR. J. WATTERS (CHAIR)
MS G. SPARROW
DR. P. CHART
MR. P. MALETTE
DR. J. RAPIN**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

**MS ELISABETH WIDNER
MS SIMMY DHAMRAIT**

COUNSEL FOR DR. THICKE:

**MR. PAUL-ERIK VEEL
MS. AOIFE QUINN**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS. J. McALEER

**Hearing date: October 8, 2019
Decision date: October 8, 2019
Release of Reasons Date: November 6, 2019**

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on October 8, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Brian Christopher Thicke committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

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

1. under clause 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”) in that he engaged in sexual abuse of patients;
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional;
3. under subsection 33(3)(c) of *The Medical Act*, R.S.O. 1960, c. 234, as amended by S.O. 1962-63, c. 80, s. 1 and S.O. 1965, c. 69, s. 3 and subsection 34(3)(c) of *The Medical Act*, R.S.O. 1970, c. 268 in that he has been guilty of misconduct in a professional respect and paragraph 26.28 of Ontario Regulation 577/75 made under the *Health Disciplines Act* (“O. Reg. 577/75”) and paragraph 27.29 of Regulation 448 of the Revised Regulations of Ontario 1980 made under the *Health Disciplines Act* (“O. Reg. 448/80”) and paragraph 29.30 of Regulation 548 of the Revised Regulations of Ontario 1990 made under the *Health Disciplines Act* (“O. Reg. 548/90”) in that he engaged in sexual impropriety with patients; and

4. under subsection 34(3)(c) of *The Medical Act*, R.S.O. 1970, c. 268, in that he has been guilty of misconduct in a professional respect and paragraph 26.31 of O. Reg. 577/75 and paragraph 27.32 of O. Reg. 448/80 and paragraph 29.33 of O. Reg. 548/90 by conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO THE ALLEGATIONS

Dr. Thicke entered a plea of no contest to allegation 2 in the Notice of Hearing, under paragraph 1(1)33 of O. Reg 856/93, in that he has engaged in an act or omission relevant to the practice of medicine that, having regarding to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and to allegation 4 in the Notice of Hearing, under subsection 34(3)(c) of *The Medical Act*, R.S.O. 1970, in that he has been guilty of misconduct in a professional respect, and paragraph 26.31 of O. Reg. 577/75 made under the *Health Disciplines Act*, and paragraph 27.32 of O. Reg. 448/80 made under the *Health Disciplines Act*, and paragraph 29.33 of O. Reg. 548/90 made under the *Health Disciplines Act*, by conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Counsel for the College withdrew the first and third allegations in the Notice of Hearing.

THE FACTS

The following facts were set out in a Statement of Uncontested Facts and Plea of No Contest which was filed as an exhibit and presented to the Committee:

BACKGROUND

1. Dr. Brian Christopher Thicke (“Dr. Thicke”) is a ninety (90) year old physician who practiced family medicine. He received his certificate of registration in 1956.

2. Between approximately 1965 and 2018, Dr. Thicke practiced at Peel Village Medical located at 28 Rambler Drive in Brampton (“Peel Village Medical”). In addition to his family medicine practice, Dr. Thicke was a designated Civil Aviation Medical Examiner. He conducted civil aviation medical examinations for pilots and medical examinations for flight attendants. Between 1965 and 2018, Dr. Thicke held hospital privileges at William Osler Health System.

3. On January 23, 2018, Dr. Thicke entered into an undertaking in lieu of an Order under s.25.4 of the *Health Professions Procedural Code* to have a practice monitor present for all patient encounters. Dr. Thicke did not obtain a practice monitor and ceased practicing. His certificate of registration expired on August 16, 2018.

DISGRACEFUL, DISHONOURABLE OR UNPROFESSIONAL CONDUCT

Patient A (Lisa Fruitman)

4. In the 1990s, Lisa Fruitman (“Ms. Fruitman”) was in the process of obtaining a private pilot’s licence and was required to undergo a civil aviation medical examination. She saw Dr. Thicke for a civil aviation medical examination at Peel Village Medical on June 28, 1993. She was in her mid-twenties at the time.

5. At the end of the June 28, 1993, examination, Dr. Thicke told Ms. Fruitman to get back on the examination table as he wanted to conduct a breast examination. Ms. Fruitman was surprised and asked why a breast examination was necessary in the context of a civil aviation medical. Dr. Thicke asked Ms. Fruitman whether she was questioning his judgment. Dr. Thicke then conducted a breast examination on Ms. Fruitman.

6. Prior to conducting the breast examination, Dr. Thicke failed to:

- Explain to Ms. Fruitman the rationale for the exam and what the exam would involve;
- Obtain Ms. Fruitman’s informed consent before proceeding with the exam;
- Provide Ms. Fruitman with privacy to undress; and

- Provide Ms. Fruitman with proper draping or a gown.

7. Dr. Thicke's conduct had a long-lasting impact on Ms. Fruitman and she continues to feel extremely distressed.

Patient B

8. In the late 1990s, Patient B was in the process of obtaining employment as a flight attendant with an airline. She was twenty-two (22) years old at the time. The airline required her to undergo a medical examination to complete the hiring process. The airline referred Patient B to Dr. Thicke. Patient B saw Dr. Thicke at his office at Peel Village Medical on one occasion in the late 1990s for the medical examination.

9. During the appointment, Dr. Thicke used unprofessional and inappropriate language by telling her he needed to check her "boobs".

10. Prior to conducting the breast examination, Dr. Thicke failed to:

- Explain to Patient B the rationale for the exam and what the exam would involve;
- Obtain Patient B's informed consent before proceeding with the exam; and
- Provide Patient B with proper draping or a gown.

11. As a result of Dr. Thicke's conduct, Patient B felt that the examination was "weird".

12. The airline is now defunct. Records indicating the specific date of Patient B's appointment with Dr. Thicke are not available.

Patient C

13. In the 1980s, Dr. Thicke conducted life insurance medical assessments for Sun Life Insurance. Patient C was twenty-seven (27) years old and was in the process of obtaining life insurance. The insurance company referred Patient C to Dr. Thicke for the medical assessment.

Patient C saw Dr. Thicke on June 22, 1983 at his office at Peel Village Medical.

14. At the beginning of the appointment, Dr. Thicke asked Patient C to remove all of her clothing, including her bra, leaving on only her underwear. Dr. Thicke left the examination room and returned once Patient C was undressed.
15. Patient C felt embarrassed and uncomfortable as she was not provided with any draping or a gown to cover herself, leaving her breasts fully exposed.
16. Prior to conducting the breast examination, Dr. Thicke failed to:
 - Explain to Patient C the rationale for the exam and what the exam would involve;
 - Obtain Patient C's informed consent before proceeding with the exam; and
 - Provide Patient C with proper draping or a gown.
17. As a result of Dr. Thicke's conduct, Patient C left the appointment feeling very upset.

Patient D

18. Dr. Thicke was Patient D's family physician between approximately 1966 and 1992. Patient D attended medical appointments at Dr. Thicke's office at Peel Village Medical.
19. Beginning in her teenage years, Patient D saw Dr. Thicke for physical examinations which included several breast examinations and internal examinations. On these occasions, Patient D undressed completely and wore a gown tying at the back. Prior to each breast examination, without providing any warning or explanation, Dr. Thicke pulled down Patient D's gown from the front off her shoulders, exposing her breasts. Patient D felt exposed and uncomfortable.
20. Prior to conducting the breast examinations, Dr. Thicke failed to:
 - Explain to Patient D the rationale for the exam and what the exam would involve; and
 - Obtain Patient D's informed consent before proceeding with the exam.

21. At one appointment, date unknown, when Patient D was approximately 15 or 16 years old, Dr. Thicke failed to show appropriate sensitivity while he was conducting a Pap test and commented, “aren’t you a healthy looking young lady”. Patient D was a young teenager and this was her first Pap test. Patient D was disturbed by the comment.

22. As a result of Dr. Thicke’s conduct, Patient D felt upset and uncomfortable.

Patient E

23. In approximately 1996, Patient E was in the process of obtaining employment as a flight attendant with an airline. She was in her twenties at the time. The airline required her to undergo a medical examination to complete the hiring process. The airline referred Patient E to Dr. Thicke. Patient E saw Dr. Thicke on one occasion at Peel Village Medical for the examination.

24. During the medical appointment, Dr. Thicke asked Patient E to remove her shirt. She remained in her bra and pants. Dr. Thicke remained in the room while Patient E undressed and did not provide her privacy. He did not offer Patient E a gown or drape.

25. Dr. Thicke conducted a breast examination on Patient E. Prior to conducting the breast examination, Dr. Thicke failed to:

- Advise Patient E that he was going to conduct a breast examination;
- Explain to Patient E the rationale for the exam and what the exam would involve;
- Obtain Patient E’s informed consent before proceeding;
- Provide Patient E with privacy to undress; and
- Provide Patient E with proper draping or a gown.

26. As a result of Dr. Thicke’s conduct, Patient E felt confused and upset.

27. The airline is now defunct. Records indicating the specific date of Patient E’s appointment with Dr. Thicke are not available.

Patient F

28. Patient F was a patient of Dr. Thicke between approximately 1965 to 1980. She saw Dr. Thicke at his office at Peel Village Medical.

29. When Patient F was approximately eighteen (18) or nineteen (19) years old, she attended an appointment with Dr. Thicke to obtain a birth control prescription. At this appointment, Dr. Thicke conducted a physical examination of Patient F which included a breast exam and internal exam. This was Patient F's first physical examination. Dr. Thicke told Patient F to undress completely and put on a gown. He did not provide her privacy to undress and Patient F felt exposed and uncomfortable.

30. During the appointment, Dr. Thicke used unprofessional and inappropriate language with Patient F by telling her that he was first going to examine her "boobies". Dr. Thicke then conducted a breast examination on Patient F.

31. Prior to conducting the breast examination, Dr. Thicke failed to:

- Explain to Patient F the rationale for the exam and what the exam would involve; and
- Obtain Patient F's informed consent before proceeding with the exam.

32. Prior to conducting the internal examination, Dr. Thicke failed to:

- Explain to Patient F the rationale for the exam and what the exam would involve; and
- Obtain Patient F's informed consent before proceeding with the exam.

33. At the end of the appointment, Dr. Thicke provided Patient F a prescription for birth control and made an unprofessional and inappropriate comment stating that the prescription was not a "licence for promiscuity".

34. As a result of Dr. Thicke's conduct, Patient F continues to feel embarrassed and ashamed.

Patient G

35. Dr. Thicke was Patient G's family physician between approximately 1992 and 2017. Patient G attended medical appointments at Dr. Thicke's office at Peel Village Medical.

36. During appointments with Patient G, Dr. Thicke made rude, inappropriate and

unprofessional comments to her as follows:

- Dr. Thicke commented on Patient G's appearance and called her ugly; and
- Dr. Thicke made insensitive and demeaning comments about Patient G's deceased mother and her mother's finances.

37. In addition, while taking Patient G's blood pressure, Dr. Thicke failed to take sufficient care to maintain Patient G's privacy and spatial boundaries. As a result, on several occasions, Dr. Thicke's hand and arm brushed against the side of Patient G's breast.

38. As a result of Dr. Thicke's conduct, Patient G felt very nervous and anxious during appointments.

Patient H (Miryana Golubovich)

39. In May 2005, Miryana Golubovich ("Ms. Golubovich") was in the process of obtaining employment as a flight attendant with an airline. She was twenty-five (25) years old at the time. The airline required her to undergo a medical examination to complete the hiring process. Ms. Golubovich was referred to Dr. Thicke by the airline. She saw Dr. Thicke on May 30, 2005 at Peel Village Medical.

40. During the medical appointment, Dr. Thicke told Ms. Golubovich that he needed to examine her heart with a stethoscope. She sat on the examining table and unbuttoned the top two buttons of her shirt. Without providing any explanation or obtaining informed consent, Dr. Thicke unbuttoned two more buttons of Ms. Golubovich's shirt and displaced her shirt and bra strap. As a part of the examination, he then placed his stethoscope and hand underneath her bra strap to listen to her heart. Ms. Golubovich felt Dr. Thicke's hand on her nipple and breast. Dr. Thicke failed to show appropriate sensitivity by allowing his hand to rest on her nipple and breast without any explanation.

41. Ms. Golubovich was troubled by Dr. Thicke's conduct.

Patient I

42. In the mid-1980s Patient I was a private pilot. To obtain her private pilot's licence, she was required to undergo a civil aviation medical examination. Her flying club recommended Dr. Thicke to its members. Patient I saw Dr. Thicke on one occasion sometime in approximately 1985 at Peel Village Medical.

43. Dr. Thicke conducted a civil aviation medical examination of Patient I. At some point towards the end of the appointment, Dr. Thicke conducted a breast examination on Patient I.

44. Prior to conducting the breast examination, Dr. Thicke failed to:

- Explain to Patient I the rationale for the exam and what the exam would involve; and
- Obtain Patient I's informed consent before proceeding with the exam.

45. As a result of Dr. Thicke's conduct, Patient I was shocked and upset.

Patient J

46. Patient J and her husband were members of a flying club and Patient J wanted to obtain a private pilot's licence. To obtain her private pilot's licence, she was required to undergo a civil aviation medical examination. The flying club recommended Dr. Thicke to its members. Patient J saw Dr. Thicke on one occasion on September 24, 1987 at Peel Village Medical for the medical examination. She was thirty-seven (37) years old.

47. Dr. Thicke conducted a civil aviation medical examination of Patient J. At some point towards the end of the appointment, without any warning or explanation, Dr. Thicke displaced Patient J's clothing and conducted a breast examination on Patient J. Patient J was not expecting a breast examination.

48. Prior to conducting the breast examination, Dr. Thicke failed to:

- Advise Patient J that he was going to conduct the examination;
- Explain to Patient J the rationale for the exam and what the exam would involve;

- Obtain Patient J's informed consent before proceeding; and
- Provide Patient J with proper draping or a gown.

49. As a result of Dr. Thicke's conduct, Patient J felt shocked and extremely confused.

Patient K

50. Patient K was a patient of Dr. Thicke in approximately 1984 and 1985. Patient K attended medical appointments at Dr. Thicke's office at Peel Village Medical.

51. During several medical appointments, Dr. Thicke made inappropriate and unprofessional comments about Patient K's appearance and her figure. Patient K found these comments very odd and this made her uncomfortable.

52. At Patient K's last medical appointment, Dr. Thicke made an inappropriate and unprofessional comment to Patient K about the importance of getting her "boobies" checked.

53. As a result of Dr. Thicke's conduct, Patient K was very upset and never returned to see Dr. Thicke again.

Complainant L (Cheryl Thorpe)

54. Between 1975 and 1978, Cheryl Thorpe ("Ms. Thorpe") was employed as a nurse at the Peel Memorial Hospital in Brampton. She was twenty-three (23) years old. Dr. Thicke held privileges at Peel Memorial Hospital during that time. Ms. Thorpe was a colleague of Dr. Thicke and periodically saw him at the hospital.

55. On a date in approximately 1977, Ms. Thorpe was working a nursing shift in the hospital. She was assigned to work in the nursery and was asked to bottle-feed a baby.

56. During her shift in the nursery, Ms. Thorpe was seated on a chair behind a partition wall with a baby in her arms, bottle-feeding the baby. She was alone in the nursery. Dr. Thicke unexpectedly approached her. Ms. Thorpe does not recall whether Dr. Thicke greeted her or whether she had any conversation with Dr. Thicke. Dr. Thicke, while standing in front of Ms. Thorpe, slid his hand into her uniform and grabbed and squeezed her left breast. He then left.

57. Ms. Thorpe was startled and in disbelief.

58. She immediately reported the incident to the head nurse and subsequently to the Director of Nursing at the hospital.

Patient M

59. In 2004, Patient M was in the process of obtaining employment as a flight attendant with an airline. She was twenty-six (26) years old at the time. The airline required her to undergo a medical examination to complete the hiring process. Patient M was referred to Dr. Thicke by the airline. Patient M saw Dr. Thicke on one occasion on April 6, 2004 at his office at Peel Village Medical for the examination.

60. At the beginning of the examination, Dr. Thicke asked Patient M to remove her shirt. Her bra and pants remained on. Dr. Thicke remained in the room while Patient M undressed. He did not provide her with privacy. He did not offer or provide Patient M with any draping or a gown.

61. Patient M sat on the examination table and Dr. Thicke told her he was going to check her heartbeat with a stethoscope. Without warning or explanation, Dr. Thicke moved Patient M's bra with his hand. This resulted in Patient M feeling exposed and uncomfortable. Dr. Thicke then placed the stethoscope on Patient M's chest to listen to her heartbeat. Patient M felt Dr. Thicke's hand on her breast and nipple. Dr. Thicke failed to show appropriate sensitivity by allowing his hand to rest on Patient M's breast and nipple without any explanation

62. Dr. Thicke made an inappropriate and unprofessional comment about Patient H's appearance by stating, "why are all of you girls from Montreal so pretty".

63. As a result of Dr. Thicke's conduct, Patient H felt extremely upset.

Patient N

64. In 2005, Patient N was in the process of obtaining employment as a flight attendant with an airline. The airline required her to undergo a medical examination to complete the hiring process. Patient N was referred to Dr. Thicke by the airline. Patient N saw Dr. Thicke on one occasion in approximately the spring of 2005 at his office at Peel Village Medical.

65. During the medical appointment, Dr. Thicke conducted a breast examination.
66. Prior to conducting the breast examination, Dr. Thicke failed to:
- Advise Patient N that he was going to conduct a breast examination;
 - Explain to Patient N the rationale for the exam and what the exam would involve;
 - Obtain Patient N's informed consent before proceeding with the exam; and
 - Provide Patient N with proper draping or a gown.
67. As a result of Dr. Thicke's conduct, Patient N felt very confused about the breast examination.

Patient O

68. Dr. Thicke was Patient O's family physician between approximately 1967 and 1987. Patient O attended medical appointments at Dr. Thicke's office at Peel Village Medical.
69. On a date in approximately 1982, Patient O saw Dr. Thicke for a medical appointment. She was approximately fifteen (15) years old at the time. Months earlier, Patient O had sustained a fall that had resulted in a persistent bump on her right buttocks. Her mother was concerned that the bump was cancerous and wanted Patient O to get it examined. Patient O attended the appointment on her own.
70. During the appointment, Patient O told Dr. Thicke of her concerns about the bump on her buttocks. Dr. Thicke asked Patient O to lower her pants and underwear so he could examine the bump. He remained in the room when Patient O undressed and did not provide her privacy. He did not offer or provide her with any draping or a gown. While Patient O was standing, Dr. Thicke examined the bump on her buttocks and made an inappropriate and unprofessional comment about Patient O being overweight, calling her a "fat ass" and suggesting that if she lost weight the bump would probably go away.
71. Patient O had ongoing weight issues during that time and felt ridiculed by Dr. Thicke.

PLEA OF NO CONTEST

72. Dr. Thicke does not contest the facts specified above in paragraphs 1-71, and does not contest that, based on these facts, he engaged in professional misconduct by engaging 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.

RULE 3.02 – PLEA OF NO CONTEST

Rule 3.02 of the Rules of Procedure of the Discipline Committee regarding a plea of no contest states as follows:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;
- b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

FINDINGS

The Committee accepted as correct all of the facts set out in the Statement of Uncontested Facts. Having regard to these facts, the Committee accepted Dr. Thicke's plea of no contest and found that he committed an act of professional misconduct:

- (i) under paragraph 1(1)33 of O. Reg. 856/93 made under the *Medicine Act, 1991*, in that he has engaged in an act or omission relevant to the practice of medicine that, having

regarding to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and

- (ii) under subsection 34(3)(c) of *The Medical Act*, R.S.O. 1970, c. 268, in that he has been guilty of misconduct in a professional respect and paragraph 26.31 of O. Reg. 577/75 made under the *Health Disciplines Act*, and paragraph 27.32 of O. Reg. 448/80 of the Revised Regulations of Ontario 1980 made under the *Health Disciplines Act*, and paragraph 29.33 of O. Reg. 548/90 of the Revised Regulations of Ontario 1990 made under the *Health Disciplines Act*, by conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

AGREED STATEMENT OF FACTS ON PENALTY

The following facts were set out in an Agreed Statement of Facts on Penalty, which was filed as an exhibit and presented to the Committee:

1. Dr. Thicke entered into an undertaking to the College on October 8, 2019, by which he agreed not to apply or re-apply for registration as a physician to practise medicine in Ontario or any other jurisdiction, effective immediately. The undertaking is attached at Tab 1 to the Agreed Statement of Facts on Penalty.
2. Dr. Thicke has no prior history with the Discipline Committee.
3. Attached at Tab 2 to the Agreed Statement of Facts on Penalty are victim impact statements from Patient F, Patient K and Patient M.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Thicke made a joint submission as to an appropriate penalty and costs order. The order proposed by the parties included that Dr. Thicke appear before the panel to be reprimanded, and that he pay costs to the College in the amount of \$10,370.00 within thirty days of the date of the order.

The College filed an undertaking signed by Dr. Thicke on October 8, 2019 (Exhibit 3, Tab1). This contains his acknowledgement that he ceased practising medicine as of January 23, 2018, that his certificate of registration expired on August 16, 2018 and his undertaking not to apply or re-apply as a physician to practise medicine in Ontario or any other jurisdiction.

In considering the proposed penalty order, the Committee reflected upon the well-established penalty principles applicable in the discipline setting. In this matter, denunciation of the conduct, general deterrence and maintaining public confidence in the integrity of the profession and professional regulation were particularly relevant. Public protection, while always paramount, was already satisfied as a result of Dr. Thicke's cessation of practice and by his undertaking never to reapply for a certificate of registration. Specific deterrence and rehabilitation were not factors the Committee considered, given the circumstances of the misconduct and Dr. Thicke's undertaking never to reapply for a certificate of registration. A penalty should always be proportionate to the misconduct. In this case, given the number of complainants and the fact this misconduct took place over decades, the Committee would have ordered that Dr. Thicke's certificate of registration be revoked, but for his undertaking, as there is no room in the profession for someone who has engaged in this scope of misconduct.

The Committee was also aware of the direction of the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, that a joint submission should be accepted by the Committee, unless the proposed penalty would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest.

In this matter, the misconduct spanned almost three decades. The two allegations of disgraceful, dishonourable or unprofessional conduct refer to conduct occurring before and after a change in legislation which occurred on February 2, 1995. Allegation 2 in the Notice of Hearing applies to Patients E, G, H, M, N. Allegation 4 in the Notice of Hearing applies to Patients A, B, C, D, F, G, I, J, K, L, O. Due to the range in dates, both allegations apply to Patient G.

ANALYSIS

Nature and Extent of the Professional Misconduct

Dr. Thicke pled no contest to appalling and reprehensible conduct, which occurred over three decades, and which involved many patients and one nurse.

The misconduct with respect to patients included performing breast and other intimate examinations without explanation or informed consent. Dr. Thicke regularly failed to respect patient privacy when patients were disrobing and often did not provide appropriate draping. Dr. Thicke used rude and offensive language in his interactions with patients. He breached boundaries fundamental to proper and effective professional relationships.

The Committee was particularly disturbed by the following:

- Dr. Thicke's use of abusive language in referring to a fifteen year old patient as "a fat ass". He repeatedly referred to women's breasts as "boobies". He commented on a patient's appearance and called her ugly. This rude and inappropriate language left patients understandably offended and upset;
- Many of Dr. Thicke's patients were particularly vulnerable in that they had been specifically referred to him for pre-employment physical examinations, for civil aviation medical examinations or for life insurance medical examinations. In all instances, patients had to obtain a medical assessment and there was a disincentive for them to report any concerns about Dr. Thicke's conduct of the examinations;
- Dr. Thicke's inappropriate and offensive behavior extended beyond his patients and involved a nurse whose breast he grabbed while she was alone in a hospital nursery bottle-feeding a baby. This act was profoundly disturbing and extremely offensive; and,
- Dr. Thicke did not appropriately treat teenaged patients with the sensitivity they deserved when he failed to explain his examination and made inappropriate comments such as birth control measures not being a "license for promiscuity". This left one patient

ashamed and embarrassed. To another patient, Dr. Thicke commented “Aren’t you a healthy looking young lady” during her first pap test, which was extremely inappropriate.

The consequences to patients of the behavior fully described in the Statement of Uncontested Facts must not be underestimated. As illustrated in the witness impact statements received by the Committee, patients have felt betrayed and have lost their trust in the medical profession, particularly in male physicians. Humiliation, self-deprecation and shame were expressed. The effect of Dr. Thicke’s behavior has left patients profoundly upset and this has endured for many years.

Dr. Thicke’s reprehensible and disrespectful behavior has had a detrimental impact on the public’s view of the medical profession. The public places great trust in the medical profession and, in turn, expects the profession to uphold core values including placing patients’ needs foremost and treating patients with both sensitivity and respect. Dr. Thicke’s misconduct undermines this trust and brings the reputation of the profession into disrepute. The Committee regrets that he was able to continue with this repugnant behavior for so long a time.

Such serious misconduct requires serious sanction.

Aggravating Factors

The number of individuals impacted (patients and a nurse), the young age and vulnerability of several patients, the nature of the misconduct and the fact that it took place over three decades are all aggravating factors.

Mitigating Factors

Dr. Thicke’s plea of no contest is a mitigating factor. This has reduced the time and costs of a hearing and spared witnesses the need to testify. However, the fact that Dr. Thicke entered a plea of no contest and has undertaken never to apply or reapply to practise medicine does not lessen his culpability, nor the seriousness of his misconduct.

Case Law

The Committee received three prior College cases for review (*CPSO v. Jiaravuthisan, 2016*; *CPSO v. Rudd, 2018*; *CPSO v. Mossanen, 2018*). All of these cases involved allegations of disgraceful, dishonourable or unprofessional conduct and proceeded by way of an agreed statement of facts or a plea of no contest. The penalty assessed in all of these cases included an undertaking to resign from the medical profession and never to reapply in Ontario or any other jurisdiction.

Even though the misconduct in each of the three cases is unique, all represented serious misconduct. In each case, public protection was achieved through an undertaking to resign and never to reapply. The penalty order proposed for Dr. Thicke is similar and the Committee accepts it as appropriate, given the expiry of Dr. Thicke's certificate of registration in 2018 and his October 8, 2019 undertaking to the College not to apply or re-apply for registration to practise medicine as a physician in Ontario or any other jurisdiction, effective immediately.

CONCLUSION

The Committee accepts the jointly proposed penalty as appropriate in the circumstances of this case.

Protection of the public, general deterrence and public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest are achieved, given Dr. Thicke's undertaking not to apply or reapply to practice medicine in Ontario or any other jurisdiction. Viewed in its entirety, the undertaking plus the penalty of a reprimand send a clear message to the profession and the public that failure to behave in a proper professional manner is a serious issue and that such misconduct will not be tolerated.

The Committee in its reprimand sternly condemned Dr. Thicke for his behavior, which the Committee found deeply repugnant. The Committee indicated that, but for the fact that Dr. Thicke no longer held a certificate of registration, the Committee would have ordered revocation. The Committee took some comfort that Dr. Thicke will never again practise medicine in any

jurisdiction. He has, however, left a stain on the profession and the Committee is deeply saddened that so many women suffered as a result of his misconduct for so long. The Committee recognizes that it must have been very difficult for these women to come forward and to assert these allegations and they are to be commended for doing so. Our profession must do all that it can to create an atmosphere where such misconduct is never tolerated and patients and colleagues who face such abhorrent behaviour are encouraged to disclose such misconduct and are supported when they do so.

The Committee also accepted the joint submission with respect to costs and concluded that this was an appropriate case in which to order Dr. Thicke to pay costs in the amount of \$10,370.00.

ORDER

The Committee stated its findings in paragraph 1 of its written order of October 8, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Thicke attend before the panel to be reprimanded.
3. Dr. Thicke pay costs to the College in the amount of \$10,370.00 within thirty (30) days of the date of this Order.

At the conclusion of the hearing, Dr. Thicke waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.