NOTICE OF PUBLICATION BAN

In the matter of the College of Physicians and Surgeons of Ontario and Dr. William Arthur Damian Beairsto, this is notice that the Discipline Committee ordered that no person shall publish or broadcast 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*, S.O. 1991, c. 18, as amended.

On March 6, 2017, the Committee ordered that there shall be a ban on publication of the names and any information that could disclose the identity of patients referred to orally or in the exhibits filed at the hearing under subsection 45(3) of the Code.

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. Beairsto, 2016 ONCPSD 24

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. WILLIAM ARTHUR DAMIAN BEAIRSTO

PANEL MEMBERS:

DR. W. KING (CHAIR)
DR. E. ATTIA (Ph.D.)
DR. B. LENT
MR. S. BERI

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. E. WIDNER

COUNSEL FOR DR. BEAIRSTO:

MR. A. PATENAUDE
MR. M. LERNER

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. G. FORREST

PUBLICATION BAN

Hearing Dates: October 19 and 20, 2015
Decision Date: August 5, 2016
Release of Written Decision: August 5, 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 October 19 and 20, 2015. At the conclusion of the hearing, the Committee reserved its decision on finding.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Beairsto 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 has 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*, in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO THE ALLEGATIONS

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

BACKGROUND

(a) Overview of the Issues

The allegations of sexual abuse and disgraceful, dishonourable, or unprofessional conduct arise from the clinical care provided by Dr. Beairsto to Patient A. From 1997 to 2012, this care consisted mainly of psychotherapy, although Dr. Beairsto did intermittently address her physical health as well.

Patient A alleged that, during clinical encounters, Dr. Beairsto made remarks to her that were inappropriate and/or of a sexual nature; touched her in a manner that was inappropriate and/or of a sexual nature; and hugged and kissed her.

In determining whether Dr. Beairsto engaged in conduct that constituted sexual abuse of Patient A and/or disgraceful, dishonourable or unprofessional conduct, the Committee was asked to focus on alleged touching that occurred during particular encounters (a back massage, a touching of her buttocks, a chest examination), as well as on alleged remarks and other behaviours, such as hugs and kisses at the end of clinical sessions. There is also the issue of whether Dr. Beairsto afforded the patient privacy when she disrobed during the clinical session in which it is alleged the back massage took place.

(b) Summary of the Evidence

The Committee heard testimony from only two witnesses: Patient A, who was called as a witness by the College; and Dr. Beairsto, who testified in his own defence.

Exhibits filed included a photocopied version of the original clinical records and a handwritten copy of the clinical records transcribed by Dr. Beairsto himself. While the Committee heard that this transcribed copy was not a word-for-word version of the original, counsel for the College and Dr. Beairsto's counsel agreed that the discrepancies were of a minor nature and did not alter the substance or meaning of the text. Dr. Beairsto did indicate that, during his transcription, he had added X's or XX's to certain entries. He testified that these markings reflected his emotional reaction to particular entries.

THE EVIDENCE

Patient A

Patient A, a mother with adult children, began seeing Dr. Beairsto in 1997. She had sought him out on the recommendation of a co-worker because she had been struggling to cope with the breakup of her longtime marriage.

For the next 15 years, Patient A discussed her personal life with Dr. Beairsto during psychotherapy sessions, including details about her sexual encounters, new romantic relationships, and difficulties with relatives. In addition, Dr. Beairsto intermittently addressed some of Patient A's physical health concerns, including chronic back pain and a persistent cough, because she had been unsatisfied with her family physician's treatment of these issues.

Patient A testified that her appointments with Dr. Beairsto would take place after work, in the late afternoon or early evening. She reported that, on arriving at his office, she would ring the doorbell and enter because the door was always unlocked. She was not greeted by a receptionist. She recalled only two occasions when her departure overlapped with the arrival of other patients.

Counsel for the College filed photographs of the exterior of the house where Dr. Beairsto's office was located and of the office itself. Patient A testified that Dr. Beairsto would always sit behind his desk, and she would always sit on the opposite side of the desk in a large chair. The office also had an examining table and other equipment required to perform a physical exam.

Patient A testified that she talked to Dr. Beairsto about her anxiety and difficulty coping since the breakup of her marriage. She also testified about particular things that Dr. Beairsto did that seemed "weird" to her or made her feel uncomfortable or embarrassed, including a

back massage, an incident involving the touching of her buttocks, a chest examination, certain remarks that were made, and hugs and kisses that occurred at the end of sessions.

During cross-examination, Patient A was repeatedly asked for specific details related to the events she had described in chief. Patient A acknowledged that she was unable to give specific dates for any of the events, although she testified that the back massage had occurred early in her doctor-patient relationship with Dr. Beairsto; the touching of her buttocks had occurred sometime in the middle of that relationship; and, the chest examination incident had occurred towards the end of her doctor-patient relationship with Dr. Beairsto.

Patient A acknowledged that she had not written down specific dates or other relevant information regarding these incidents. She testified that she did tell her friend who had originally suggested she see Dr. Beairsto about the back massage incident.

Patient A was cross-examined about the circumstances surrounding her writing of the letter to the College. Patient A testified that she had decided to write a letter to the College after discussing her concerns with respect to Dr. Beairsto's behaviour with her new family physician that she particularly liked. Patient A stated that she found it quite difficult to write the letter to the College. She worked on it for two months prior to sending it to the College in January 2013. She acknowledged that her testimony at the hearing included details that were not included in her January 2013 letter, such as information about Dr. Beairsto touching the sides of her breasts during the back massage, and did not include all details of the incident in which Dr. Beairsto touched her buttocks.

Patient A testified that some aspects of Dr. Beairsto's behaviour made her uncomfortable and embarrassed. This led her to question their appropriateness, since her other doctors had interacted with her differently. Nonetheless, she continued to see Dr. Beairsto because she found him to be supportive and attentive, and the counseling sessions were helpful to her.

When asked during re-examination by College counsel as to why she complained to the College, Patient A indicated that she wanted the College to know that some inappropriate things had happened in her relationship with Dr. Beairsto.

Dr. Beairsto

Dr. Beairsto testified regarding his training as a family physician, the nature of his practice, and his clinical involvement with Patient A.

Dr. Beairsto opened his practice in 1979, after completing medical school and family medicine training in Ontario. He described his current practice as 90 percent general practice psychotherapy and ten percent "general adult medicine," with some patients receiving both.

Since 1993, Dr. Beairsto has worked alone in a small house down the street from his home without an on-site receptionist. His wife and adult children help him with the administrative aspects of his practice, such as billing and filing.

College counsel reviewed the nature of Dr. Beairsto's practice with him. As noted above, Dr. Beairsto acknowledged under cross-examination that he had rewritten his medical records to ensure they would be legible to everyone, and that the version of his medical records sent to the College was the re-written version.

Dr. Beairsto acknowledged that he had Patient A's letter of complaint, the transcript of her interview with the College investigators, and his own records available to him when he wrote his response to the complaint to the College.

Dr. Beairsto denied ever touching Patient A for sexual gratification. He testified that he never got the impression that she was uncomfortable during their sessions because she would tell him about very intimate details of her life. He had thought they had a good therapeutic relationship built on trust.

Dr. Beairsto acknowledged that he has worked with many emotionally vulnerable patients, and that Patient A had been having extensive interpersonal difficulties. Dr. Beairsto agreed with College counsel that one of Patient A's main issues during their doctor-patient relationship was that she was feeling unloved and sexually unattractive. Dr. Beairsto acknowledged that it is important to maintain strict boundaries with patients.

Dr. Beairsto denied engaging in any of the inappropriate behaviour described by Patient A, with the exception of hugging and kissing her, which is addressed further under Remarks and Other Behaviour.

Specific Encounters, Remarks and Behaviours

The Committee considered the evidence regarding the specific encounters and remarks and other behaviours at issue.

Back Massage during Psychotherapy Session

Patient A testified that she talked to Dr. Beairsto about her ongoing back pain, which seemed to be worsened by stress. She testified that on one visit early in their doctor-patient relationship, Dr. Beairsto suggested that a massage might help alleviate her pain, and he then offered to massage her back. She said that she thought this was weird but she agreed.

Patient A testified that she undressed in the office and that Dr. Beairsto remained in the room while she did so, although she was not sure where in the room he was. She put on a hospital gown but left her bra and underwear on. She lay face down on the examining table. She testified that Dr. Beairsto spent 20 minutes rubbing her neck, her back, her sides – including the outside of both breasts – and her lower legs.

Patient A testified that Dr. Beairsto remarked on the varicose veins in her legs, and that she had informed him that they were related to her pregnancies. She described the massage as relaxing as opposed to therapeutic. She testified that she had felt uncomfortable at the time

and wondered whether it was okay that Dr. Beairsto was massaging her. When the massage ended, she got dressed and returned to her chair near the desk, and their psychotherapy session continued.

On cross-examination, Patient A acknowledged that Dr. Beairsto had given her a hospital gown to change into. She testified that she thought there had been a divider in the room that she could change behind. She could not recall whether Dr. Beairsto had watched her while she undressed.

In cross-examination, Patient A testified that she had left her bra and underwear on, and that only her back, buttocks, and legs were exposed. She testified that she remembered that Dr. Beairsto had touched the side of her breasts, and that she was not guessing about whether or not this had happened. She testified that the massage made her feel uncomfortable at the time. Patient A acknowledged that she did not include certain details about the massage in her original letter to the College, but that she did tell the College investigators about the massage.

With respect to examining Patient A for her back pain, Dr. Beairsto testified that she would have been wearing a gown with her undergarments on while he palpated her back. He testified that there was a private bathroom just past the examining table where patients could undress in private. He denied ever giving her a massage or touching her breasts.

Dr. Beairsto agreed that it would be inappropriate to give a patient a massage.

Touching of Her Buttocks

Patient A described an incident in which Dr. Beairsto stroked her buttocks as she was getting ready to leave the office. Dr. Beairsto had quickly come around his desk, as he usually did, and positioned himself so that he had one hand on her buttocks and one hand in front of her, restricting her movement somewhat. Patient A testified that this made her feel “like a deer in headlights.” She therefore made efforts to leave the office quickly.

Patient A testified that Dr. Beairsto was either sitting on a stool or was down on one knee, and that he put one of his hands on her buttocks. She testified that this incident occurred sometime in the middle of their doctor-patient relationship, and that she continued to see Dr. Beairsto, despite her embarrassment at the time.

She acknowledged that certain details of the incident in which Dr. Beairsto touched her buttocks were not included in her January 2013 letter to the College. In particular, Patient A's letter to the College did not include a description of Dr. Beairsto kneeling down, waiting for her to approach, moving his hand up and down her buttocks or putting his hand in the center of her buttocks. Patient A's letter to the College also stated that Dr. Beairsto hugged her and kissed her cheek before touching her buttocks, but Patient A testified that she did not remember Dr. Beairsto hugging and kissing her at that time.

Dr. Beairsto denied that he ever rubbed Patient A's buttocks. He testified that he never sat on the pink plastic stool seen in the office photo. He denied kneeling down in front of Patient A, explaining that he did not think he could get up from such a position because of his size and overall health.

2011 Chest Examination

Patient A, who had ongoing problems with bronchitis, described another visit that involved a physical examination by Dr. Beairsto. Patient A testified that, on one occasion in 2011, Dr. Beairsto offered to check her chest because of her bronchitis. She testified that she sat on the examining table, anticipating that Dr. Beairsto would use his stethoscope to listen to her chest. She testified that, when he rolled up the front of her shirt above her bra near her collarbone, she was surprised because this method was inconsistent with how other physicians had examined her. She recalled that, while looking at her chest and breasts, Dr. Beairsto smiled and made a "woo" sound that sounded to her like a sound of "approval."

On cross-examination, Patient A testified that Dr. Beairsto had not asked her to take her top off on that occasion; rather, he had rolled up her shirt and placed his stethoscope on her

chest. With respect to the noises Dr. Beairsto had made while listening to her chest, Patient A did not agree with defence counsel's suggestion that Dr. Beairsto had been making those noises in response to what he was hearing in her chest.

When asked about the alleged chest examination, Dr. Beairsto referred to his clinical notes of a particular date in July 2011. He testified that he had examined Patient A at her own request. He testified initially that Patient A had "clearly had a gown on," but corrected himself and said that, "perhaps there was no need for a gown." The Committee noted that Dr. Beairsto's records did not reflect that Patient A was wearing a gown.

Dr. Beairsto testified that his practice was to ask patients to lift their shirts, and he would then appropriately place the stethoscope on the patient's skin and move it across the chest. He testified that a physician would be rendered "effectively deaf" during the examination by virtue of the stethoscope. Dr. Beairsto went on to explain that, if a patient were to talk to him while he wears a stethoscope, he might respond with "hm-hm-hm," even though he would be unable to hear precisely what the patient was saying.

On cross-examination, Dr. Beairsto reiterated that the chest exam was "completely appropriate" and "completely innocent." He denied making inappropriate noises or smiling inappropriately. Dr. Beairsto emphasized the importance of applying the stethoscope directly to skin, stressing that there was nothing sexually inappropriate about doing so.

Dr. Beairsto testified that it was his practice to ask permission to lift a patient's shirt, or to ask the patient to lift it. Dr. Beairsto also suggested that a patient's consent for a chest exam was implied if the patient was sitting on an exam table and watching the doctor reach for a stethoscope.

Dr. Beairsto reinforced the fact that he cannot hear what the patient is saying once he inserts the stethoscope into his ears. He testified that if he had made any noises during Patient A's chest examination, Patient A misconstrued their meaning. College counsel pointed out to Dr.

Beairsto that he had not included this explanation of his making noises during the chest exam in his letter to the College.

Remarks and Other Behaviours

Patient A testified about alleged remarks and other behaviours of Dr. Beairsto.

Remarks

Patient A testified that Dr. Beairsto would compliment her on her hair and/or outfit at every visit. She testified that he said to her "a few times" that she would make a good lover. She testified that she had felt embarrassed by these remarks.

With respect to the alleged remarks of a sexual nature made during his encounters with Patient A, Dr. Beairsto testified that he would compliment patients about their hair or appearance to "prop up their self-image" and to minimize their negativity about themselves. He denied that he would have told Patient A that she would be a good lover.

Hugs and Kisses

Patient A testified that Dr. Beairsto would end each session by coming around his desk, kissing her on the cheeks, and hugging her. She testified that she found this "weird" and different from what she experienced with other doctors.

Patient A acknowledged that Dr. Beairsto's hugs were similar to the hugs friends might give each other at a party, but she emphasized that the situation with Dr. Beairsto was different because he was her doctor.

On cross-examination, Patient A testified that Dr. Beairsto kissed her after every visit, but that he never kissed her on the mouth. Patient A acknowledged that Dr. Beairsto's hugs were supportive in nature. Patient A described that although Dr. Beairsto's hugs and kisses were like the ones she would receive from friends at a cocktail party, she did not expect such hugs

or kisses from her doctor. Patient A also acknowledged that there was nothing in her letter to the College to suggest that Dr. Beairsto kissed her at every visit.

Dr. Beairsto denied engaging in any of the inappropriate behaviour described by Patient A, with the exception of hugging and kissing her. He testified that this was because his standard practice was to end psychotherapy sessions with both men and women by kissing them on the cheek in a "cocktail party manner," and hugging them in a "European-style" hug.

Dr. Beairsto testified that the hugs he gives to his patients are supportive in nature. He described the hugs as "European in style, and of a cocktail variety," as opposed to sexual hugs. Dr. Beairsto testified that he hugs his patients to demonstrate that he is "in alliance with" them and does not reject them.

Dr. Beairsto testified that he "sincerely regrets" hugging Patient A because she had "badly" misinterpreted his behaviour.

Upon learning of Patient A's allegations, Dr. Beairsto testified that he has changed his practice and now hugs and kisses his gay male patients only, as this allows him to demonstrate that, as a straight man, he is not homophobic.

Dr. Beairsto admitted that he hugged and kissed Patient A. He maintained that he hugged and kissed her "on a therapeutic basis," and that his hugs were "simply a friendly gesture." Dr. Beairsto testified that he sees the kisses as "representing a validation of the therapeutic alliance."

He reiterated that his intention in hugging Patient A was to be supportive, and that both she and the College have misinterpreted his behaviour. Dr. Beairsto could not recall whether he had ever asked Patient A if he could hug or kiss her.

Dr. Beairsto Touching his Crotch or Putting his Hand Near his Crotch

Patient A described another incident where she said Dr. Beairsto touched himself near his genitals and then smelled his hand. She testified that this incident had also left her feeling embarrassed.

Dr. Beairsto denied that he would have touched his crotch during a patient encounter. He explained that he might have moved his hand from somewhere below the desk towards his nose as part a demonstration to explain that smelling one's vaginal discharge could be helpful in determining if a vaginal infection had resolved. Dr. Beairsto testified that Patient A had misinterpreted his efforts to give a "practical bit of advice as a GP." He denied there was any sexual aspect to his behaviour.

He denied that he had touched himself in an inappropriate manner when explaining to Patient A how she would know if the vaginal infection had resolved, and indicated that he was offended that College counsel would suggest that his advice regarding vaginal infections was inappropriate.

Dr. Beairsto stated that Patient A misjudged and misconstrued the events, and that his approach to address a patient's concerns regarding recurrent infections was reasonable and harmless. He indicated that he had a clear memory of the encounter. Counsel for the College pointed out that this explanation is missing from his letter to the College.

Dr. Beairsto Following Patient A

Patient A testified that, on the same day as the incident in which Dr. Beairsto touched her buttocks, after she left Dr. Beairsto's office and as she waited at the nearby bus stop in the heavy rain, she was surprised to see Dr. Beairsto walk by. She tried to converse with him but he did not respond to her and continued walking. She wondered if he might have been following her. The incident was not discussed at their subsequent visit.

Dr. Beairsto denied following Patient A to the bus stop "or to anywhere." He explained that a possible reason that Patient A might have thought she had sighted him near the bus stop after one of their sessions was because he frequently drops off items at a mailbox near that bus stop.

LEGAL FRAMEWORK

The Committee was directed to the definition of sexual abuse in section 1(3) of the Health Professions Procedural Code (the Code). The specific elements of sexual abuse relevant to this hearing would be touching of a sexual nature of the patient by the member, and behaviour or remarks of a sexual nature by the member towards the patient. These would exclude behaviour or remarks "of a clinical nature appropriate to the service provided."

Counsel for the College provided the Committee with background case material to clarify the meaning of the term "of a sexual nature" used in the Code. The Committee considered *R v. Chase*, [1987] 2 S.C.R. 293, which highlights that in considering the sexual context of an assault, consideration needs to be given to "the part of the body 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…"

R v. Chase also clarifies that the intent or purpose of the person committing the act is "simply one of many factors to be considered" in deciding if the conduct is sexual in nature. "The test to be applied in determining whether the impugned conduct has the requisite sexual nature is an objective one." In other words, "viewed in the light of all of the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer?"

The Committee recognized the importance of carefully assessing the credibility of each witness and the reliability of their evidence. This is especially so in a case like this one, in which the only witnesses are the complainant and the physician.

Credibility of a witness speaks to the honesty of the witness. Reliability of a witness' evidence speaks to the accuracy of the evidence.

In its deliberations, the Committee addressed the following factors that were put together by Justice Watt for the instruction of judges in assessing credibility and reliability.

1. Did the witness seem honest? Is there any reason why the witness would not be telling the truth?
2. Did the witness have an interest in the outcome of the case or any reason to give evidence that is more favourable to one side or the other?
3. Did the witness seem able to make accurate and complete observations about the events at issue?
4. Did the witness seem to have a good memory?
5. Did any inability of difficulty that the witness has in recalling events seem genuine or did it seem made up as an excuse to avoid answering questions?
6. In the case of the complainant, did the witness seem to be reporting to you what she saw or heard or simply putting together an account based on information obtained from other sources?
7. Did the witness's evidence seem reasonable and consistent as he or she gave it? Did the witness say something different on another occasion?
8. Do any inconsistencies in the witness's evidence make the main points of the testimony more or less believable or reliable? Is the inconsistency about something important, or something minor in detail? Does it seem like an honest mistake? Is it a deliberate lie? Is the inconsistency because he or she said something different on another occasion or because he or she failed to mention something? Is there any explanation for the inconsistency? If so, does the explanation make sense?
9. What was the witness's manner when he or she testified, recognizing that while demeanour is a relevant factor in a credibility assessment, demeanour alone is a notoriously unreliable predictor of the accuracy of evidence given by a witness?

ASSESSMENT OF WITNESS CREDIBILITY AND RELIABILITY

Patient A

The Committee found Patient A to be honest and sincere in her beliefs about what had happened during her clinical encounters with Dr. Beairsto. Patient A did not seem to have any particular interest in the outcome of the matter, and stated that she wanted the College to know that inappropriate things had happened in the context of her doctor-patient relationship with Dr. Beairsto.

There was no question that she was capable of making accurate observations of Dr. Beairsto's behaviour, given that she was obviously present, with no suggestion of cognitive problems.

The Committee had no concerns about her memory or perception of critical events. Patient A acknowledged that she could not remember the dates of particular events. Her explanation for this – that she had no reason to be recording dates – seemed genuine to the Committee.

The Committee recognized that Patient A's description of various clinical examinations varied in precision. In particular, her description of the chest examination, which occurred towards the end of her relationship with Dr. Beairsto seemed precise, while her description of disrobing for examinations early in her relationship with Dr. Beairsto was less precise. The Committee put little weight on the variations in precision, in part because considerable time had elapsed since the early clinical encounters. In addition, the Committee recognized that patients would have no reason to remember precise details of specific encounters, because, at the time, they assume that all aspects of any clinical encounter take place in an appropriate manner.

The Committee recognized that there were some variations in Patient A's descriptions of the events in question. Specifically, her initial letter to the College did not include some of the details she provided in her oral testimony. For example, Patient A testified that Dr. Beairsto's

fingers had rubbed the outside aspects of her breasts while he had massaged her back, but she did not provide this detail in her letter to the College.

During cross-examination about the allegations that Dr. Beairsto touched her buttocks, she indicated that Dr. Beairsto was either on one knee or sitting on a stool when he touched her buttocks, but she did not mention the kneeling in her letter to the College.

The Committee accepted that patients would not necessarily know how much detail should be provided in letters of complaint, and recognized that the College's interview would elicit additional information from patients. Therefore, the Committee found that these minor discrepancies did not diminish Patient A's credibility.

The Committee also considered Patient A's demeanour during her oral testimony. Patient A came across as composed and not vengeful. She tried to answer questions in a straightforward and forthright manner. Her responses to vigorous cross-examination were consistent on the major points. The Committee noted that, despite her concerns with aspects of Dr. Beairsto's behaviour, Patient A acknowledged that talking to Dr. Beairsto had helped her to move forward in her personal life. Overall, the Committee found Patient A to be a very credible witness.

Dr. Beairsto

The Committee considered the same criteria when assessing Dr. Beairsto's credibility and the reliability of his evidence.

The Committee recognized that if Dr. Beairsto had behaved appropriately, strongly denying the allegations would be understandable and his denial of wrongdoing would not be used against him as a factor in assessing credibility.

There was no evidence to suggest that Dr. Beairsto was unable to accurately observe or describe his interactions with Patient A.

With respect to his memory of the events in question, Dr. Beairsto possessed detailed clinical notes of all of his encounters with Patient A. He had personally transcribed his clinical notes for this hearing.

However, while Dr. Beairsto gave very detailed descriptions of various encounters that had happened many years before, he seemed unable to remember other, more recent clinical encounters, such as her chest examination in 2011.

When asked to respond to Patient A's claim that he had touched his crotch and then moved his hand to his face in what she considered a salacious gesture, Dr. Beairsto testified that moving his hand from below his desk towards his nose would have been part of his showing Patient A how she could check for resolution of a vaginal infection. His clinical records of a particular date in April 1998 did note that both Patient A and her partner had received Flagyl, an antimicrobial medication used to treat infections. However, there was no indication in the records that he had provided Patient A with the demonstration he described, and the Committee had difficulty believing that he would remember if he had in fact done so 17 years ago. The Committee found it disingenuous that Dr. Beairsto could remember these long-ago encounters in such vivid detail – which, on his evidence, would have been unremarkable – but could not remember more recent encounters, such as his chest examination of Patient A.

In considering Dr. Beairsto's demeanour, the Committee found him to be evasive and self-serving. At times, he either failed to answer College counsel's direct questions or provided an answer that bore little relation to the specific question asked. Dr. Beairsto reacted in a self-righteous way to other questions. These responses diminished Dr. Beairsto's credibility in the Committee's view.

After carefully considering each of the factors that affect credibility, the Committee did not find Dr. Beairsto to be credible on aspects of his testimony.

FINDINGS

1. Did Dr. Beairsto massage Patient A's back?

Patient A described the back massage in detail, including the parts of the body touched and the time spent. The Committee found that the nature and extent of the touching could not be confused with a back examination.

The Committee finds that the back massage did take place and that it was inappropriate in the context of Dr. Beairsto's doctor-patient relationship with Patient A. After careful consideration of the evidence heard, the Committee finds that, if Dr. Beairsto had touched the sides of Patient A's breasts during the massage, it was incidental to the massage. Although clearly inappropriate, the massage was not sexualized, did not involve any fondling, and was not found to be touching of a sexual nature.

The Committee finds that the massage Dr. Beairsto gave to Patient A to be a boundary violation that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

2. Did Dr. Beairsto touch Patient A's buttocks?

After careful consideration of the evidence heard, the Committee accepts Patient A's testimony and finds that Dr. Beairsto touched and stroked Patient A's buttocks as she described, as she prepared to leave at the conclusion of a psychotherapy session. The Committee found that this was not a matter of incidental contact as Dr. Beairsto brushed by her.

The Committee has already dealt with its assessment of the relative credibility of Patient A and Dr. Beairsto. The Committee found Patient A to be very credible in her recounting of this incident.

Inconsistent minor details notwithstanding, Patient A's description of the central fact of the inappropriate contact between Dr. Beairsto's hand and her buttocks was clear, definite and consistent. Given its emotional impact, as shown by her description that the incident made her feel like "a deer in the headlights," it is entirely reasonable that this aspect would stand out in her memory. The Committee did not find it significant that Dr. Beairsto may have been kneeling, sitting on a stool, or standing when he touched Patient A's buttocks. The Committee found that deliberate contact with Patient A's buttocks occurred as she testified.

There remained the question of whether the behaviour which the Committee found to have occurred constituted sexual abuse. Dr. Beairsto denied he had touched Patient A for sexual gratification. "Sexual intent" is only one factor to be considered. While the Committee could accept that a pat on the back could be seen as encouraging, empathetic and therapeutic, touching of the kind found to have taken place (stroking of the buttocks) is never acceptable. The Committee applied the factors in *R v. Chase*, and considered the part of the body touched (the buttocks), the nature of the contact (stroking), the situation in which it occurred (following a psychotherapy session, with no clinical reason for Dr. Beairsto to do so) and all other circumstances surrounding the conduct, and finds this to be touching of a sexual nature, constituting sexual abuse within the meaning of the Code.

3. Did Dr. Beairsto examine Patient A's chest in an inappropriate manner?

Patient A testified that she had agreed to Dr. Beairsto examining her chest. Both witnesses agreed that, prior to Dr. Beairsto auscultating Patient A's chest, her shirt was rolled up above her breasts. Their testimony differed regarding Dr. Beairsto's demeanour during the examination and the nature of the sounds which Patient A testified that she heard.

The Committee finds implausible Dr. Beairsto's explanation of the encounter in saying that he or physicians generally are rendered deaf when using a stethoscope. In the view of the Committee, this is not so. The Committee does not believe his explanation that he merely responded to inaudible speech. The Committee took note of the fact that his explanation of the noise he had made at the time of the chest examination is not mentioned in his response to the College.

Based on the evidence and the Committee's assessment of the credibility of each witness, the Committee finds that the sounds made by Dr. Beairsto during his examination of Patient A's chest were as described by Patient A. The Committee finds that making of such sounds while conducting a chest examination would be regarded by members as inappropriate and unprofessional.

4. Did Dr. Beairsto make inappropriate remarks and/or remarks of a sexual nature to Patient A?

The Committee considered the testimony of each witness with respect to Dr. Beairsto's remarks regarding Patient A's appearance. The Committee appreciated Dr. Beairsto's explanation of the potential value in commenting on distressed patients' clothing or appearance as a way of acknowledging their intentional efforts to look after themselves.

The Committee finds that Dr. Beairsto made such remarks about her appearance. However, the Committee was not persuaded that, in the circumstances, these remarks regarding her appearance reached the threshold of being unprofessional or constituting sexual abuse.

The Committee also carefully considered the testimony of the two witnesses with respect to the remark that she would be "a good lover." Patient A testified clearly and adamantly that Dr. Beairsto told her "*a few times*" that she "would be a good lover." Dr. Beairsto denied making this remark, which he himself testified would be unprofessional.

The Committee accepts the testimony of Patient A that Dr. Beairsto made this statement to her on a number of occasions. The Committee was persuaded that this ill-advised comment was intended to make her feel good about herself and was not a sexual invitation. The Committee also accepts that such a remark could have been a clumsy and ill-advised attempt to bolster self-confidence, much like the positive comments on her appearance, not as a sexual invitation. The Committee is of the opinion that this remark by Dr. Beairsto to the patient is unprofessional.

The Committee finds that, by making this remark to Patient A, Dr. Beairsto engaged in conduct that, in the circumstances, would reasonably be regarded by members as unprofessional, but did not engage in sexual abuse of a patient.

5. Did Dr. Beairsto hug and kiss Patient A?

Both witnesses testified that Dr. Beairsto routinely ended his psychotherapy sessions with hugs and kisses. The Committee recognized that certain physical contact may be appropriate, in certain circumstances, as a way for a physician to express empathy or support. However, the Committee did not accept that the routine practice of hugging and kissing every patient in the course of every visit is appropriate.

The Committee finds this conduct by Dr. Beairsto to be unprofessional, as a crossing of professional boundaries with a patient. However, the Committee does not find, in the circumstances of this case, that the touching was of a sexual nature and therefore, this behaviour was not found to constitute sexual abuse.

6. Did Dr. Beairsto touch his crotch inappropriately and subsequently sniff his fingers?

There was no disparity in the testimony regarding this incident. Dr. Beairsto's hand was below the table and out of sight, and then he moved it toward his face. Patient A considered that this was a salacious gesture; Dr. Beairsto said that it was good practice while educating patients about vaginal discharge.

The Committee found Dr. Beairsto's description of what he said and did to be unprofessional. It is so outside the norm of what is a professional way to communicate medical information that, even if not salacious as alleged, it is completely inappropriate, and the Committee finds Dr. Beairsto's conduct to be disgraceful, dishonourable, or unprofessional.

7. Did Dr. Beairsto follow Patient A inappropriately?

With respect to the suggestion that Dr. Beairsto had followed Patient A to the bus stop after her session, the Committee does not find there was clear and sufficient evidence that established that he had followed her to the bus stop that day. Dr. Beairsto uses a mailbox near that location regularly, and this could have been a misperception that he was following her. The allegation of professional misconduct in this regard was not proved.

8. Did Dr. Beairsto watch Patient A disrobe?

Patient A alleges that, prior to a Dr. Beairsto's assessment of her back, Dr. Beairsto asked her to disrobe and put on a gown while Dr. Beairsto was still in the room. Dr. Beairsto testified that he had a washroom where patient could disrobe. Patient A was uncertain about whether or not there was a divider behind which she could disrobe privately. She was also not sure where Dr. Beairsto was in the room and therefore whether he had watched her disrobe or not.

As a general principle, it would be inappropriate for a physician to stay in the room while a patient undresses and puts on a gown. The Committee does not find that it was established that Patient A had not been given a place to disrobe privately. It was not proven that Dr. Beairsto acted unprofessionally in this regard.

SUMMARY

The Committee finds that:

1. Dr. Beairsto massaged Patient A's back in a manner that constituted a boundary violation but not sexual abuse. This conduct, in the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

2. Dr. Beairsto provided an explanation to Patient A regarding vaginal infections in an inappropriate manner involving checking vaginal odor by smelling your fingers that

would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

3. Dr. Beairsto made a comment to his patient, Patient A, that she would be a "good lover," which, in the circumstances, did not constitute sexual abuse, but did constitute an act that would be regarded by members as disgraceful, dishonourable, or unprofessional.

4. Dr. Beairsto stroked Patient A's buttocks in the manner described by Patient A. Given the part of the body touched, the nature of the contact, and the situation in which it occurred, following a psychotherapy session, and given that there would be no clinical reason for Dr. Beairsto to touch Patient A's buttocks, the Committee finds this behaviour to be touching of a sexual nature within the meaning of the RHPA's definition of sexual abuse of a patient. The Committee finds as well that this would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

5. Dr. Beairsto performed a chest examination in an inappropriate manner. Dr. Beairsto's examination of Patient A's chest while smiling and making noises of approval while using a stethoscope would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

6. Dr. Beairsto hugged and kissed Patient A at the end of psychotherapy sessions. Although the touching was not of a sexual nature, Dr. Beairsto's conduct would reasonably be regarded by members as crossing doctor-patient boundaries with a vulnerable therapeutic patient, and was disgraceful, dishonourable or unprofessional.

In summary, the Committee finds that Dr. Beairsto committed an act of professional misconduct in that he has engaged in the sexual abuse of a patient by touching, without clinical justification, of a sexual nature, and has engaged in 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.

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

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Beairsto,
2017 ONCPSD 43

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. WILLIAM ARTHUR DAMIAN BEAIRSTO

PANEL MEMBERS:

DR. W. KING (CHAIR)
DR. E. ATTIA (Ph.D.)
DR. B. LENT
MR. S. BERI

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS E. WIDNER

COUNSEL FOR DR. BEAIRSTO:

MR. A. PATENAUDE
MR. M. LERNER

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. G. FORREST
MR. R. COSMAN

Penalty Hearing Dates: March 6, 7 and 31, 2017
Penalty Decision Date: October 5, 2017
Penalty Reasons Date: October 5, 2017

PUBLICATION BAN

PENALTY DECISION AND REASONS FOR DECISION

On August 5, 2016, the Discipline Committee of the College of Physicians and Surgeons of Ontario found that Dr. Beairsto committed an act of professional misconduct in that he has engaged in the sexual abuse of a patient and has engaged in 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.

The Committee was scheduled to proceed with the penalty hearing on November 8 and 11, 2016, but the penalty hearing was adjourned, at the request of Dr. Beairsto, on the condition that he not practise medicine until the disposition of the penalty hearing. The Committee ordered:

1. That the Registrar suspend Dr. Beairsto's certificate of registration effective November 11, 2016, until such time as the matters currently referred to the Discipline Committee in the Notice of Hearing dated November 10th, 2014, are disposed of by a panel of the Discipline Committee.
2. That Dr. Beairsto submit to, and not interfere with, unannounced inspections of his Practice Location(s) and patient records by a College representative for the purposes of monitoring his compliance with this Order.
3. That Dr. Beairsto provide his irrevocable consent to the College to make appropriate enquiries of the Ontario Health Insurance Plan ("OHIP"), the Drug Program Services Branch, the Narcotic Monitoring System ("NMS") implemented under the Narcotics Safety and Awareness Act, 2010 and/or any person or institution who may have relevant information, in order for the College to monitor compliance with the terms of this Order.
4. That Dr. Beairsto pay costs to the College in the amount of $5,000.00 within 30 days of the date of this Order.

On March 6, 7 and 31, 2017, the Committee heard evidence and submissions on penalty and costs, and received supplementary written submissions on penalty on April 7, 2017.

Subsequent to the Committee's deliberations on the oral and written submissions but prior to the release of the Committee's decision on penalty, College Counsel requested permission to provide submissions to the Committee on the section 51 amendments of the *RHPA* that came into force on May 30, 2017. The Committee accepted this request and subsequently received further written submissions from College and Defence Counsel, and written advice from Independent Legal Counsel ("ILC") with respect to the issues raised by Counsel. The Committee met again on September 25, 2017 and carefully reviewed these additional submissions and written comments on ILC advice.

SUBMISSIONS ON PENALTY

College Counsel submitted that, given the repeated boundary violations with this patient, over an extended period of time, the appropriate penalty to maintain public trust in the profession and to reflect the gravity of this case would be immediate revocation, a reprimand, and the requirement that Dr. Beairsto post security in the amount of $16,060 for psychotherapy for one patient. Counsel for the College also submitted that Dr. Beairsto be required to pay the costs of five hearing days (two for the liability phase; three for the penalty phase).

With respect to the recent *RHPA* amendments, College Counsel argued for retrospective application of the legislative changes, because of the need to protect the public. College Counsel noted that touching of the buttocks for non-clinical reasons is now subject to mandatory revocation, and therefore the appropriate penalty in this case would be mandatory revocation.

Counsel for Dr. Beairsto submitted that Dr. Beairsto is committed to practising in a safe manner and given that he has not been working since November 11, 2016, the appropriate penalty would be three more months suspension, continuation of his educational program on boundaries and professional ethics until he resumes his clinical practice, and twelve months of supervision by a GP psychotherapist or psychiatrist, including a review of ten charts per month. He accepted the other elements of the College's penalty proposal, namely that Dr.

Beairsto be reprimanded, be required to pay costs, and post a line of credit to cover the potential costs of psychotherapy for the patient.

With respect to the *RHPA* amendments, Counsel for Dr. Beairsto submitted that the recent amendments should not be applied at all as the case was closed before the amendments were enacted. In addition, Counsel for Dr. Beairsto argued that the legislative changes should not be applied retrospectively because the imposition of mandatory revocation would be punitive, and that different strategic decisions with respect to his defence might have been made had they known that mandatory revocation was a possibility.

EVIDENCE ON PENALTY

Evidence Presented by College Counsel

College Counsel submitted that revocation is required to maintain public confidence in the system of self-regulation and to send a message to the profession that is commensurate with the gravity of this case.

College Counsel provided the Committee with the 2010 Decision and Reasons of the College's Inquires, Complaints and Reports Committee ("ICRC") in regards to a complaint made by a different psychotherapy patient about Dr. Beairsto's conduct.

Following a thorough investigation and a review by an independent expert (a family physician who practised psychotherapy), the ICRC determined that Dr. Beairsto had engaged in several egregious boundary crossings/violations with the patient. In its reasons, the ICRC highlighted that the expert expressed concern that Dr. Beairsto "did not address the various boundary violations and other issues raised in the initial (expert) report". The process ended with Dr. Beairsto being cautioned in person, and signing an undertaking to:

- stop seeing patients with diagnoses of certain significant personality disorders
- limit his practice hours

- separate physical examinations of patients from psychotherapy sessions
- participate in a psychotherapy support group
- pursue CPD in record-keeping and prescribing
- agree to be reassessed twelve months later

Victim Impact Statement

College Counsel read Patient A's victim impact statement. In her letter, Patient A described her ongoing "severe stress and anxiousness". She indicated that Dr. Beairsto's behaviour and comments left her feeling "violated" and "dirty", as if she were a "bad person", and she lost sleep because of her worry about the need to testify at the hearing. She wonders if she would be able to trust a physician again, especially a male physician, should she decide to seek out further counseling.

Evidence Presented by Counsel for Dr. Beairsto

Counsel for Dr. Beairsto informed the Committee that Dr. Beairsto had not been seeing patients since November 11, 2016, as his certificate of registration had been suspended. The Committee notes that, just days before the penalty hearing was to begin in early November 2016, Dr. Beairsto brought the motion for adjournment of the penalty hearing, and that request had been granted with the condition that his certificate of registration be suspended until the case was disposed of by the Discipline Committee.

Counsel for Dr. Beairsto presented the Committee with 62 patient support letters, which provided character evidence. In addition to their letters, 16 patients also testified in person. The patients represented a diverse group of men and women, approximately 30 to 60 years old. They spanned a range of economic and professional backgrounds, and some had travelled quite a distance to testify. Several had seen Dr. Beairsto for counseling for more than 15 years. They described him as a compassionate and caring counsellor, and a good listener who showed much empathy and who was willing to adapt his schedule to see them frequently, even two or three times per week, when they were dealing with a crisis in their

personal lives. Some patients had referred friends or family members to him. The Committee was also provided with 46 letters from other patients, in support of Dr. Beairsto. Some patients indicated they had learned of Dr. Beairsto's discipline matter from the local newspaper; others learned about the situation when Dr. Beairsto informed them that he would not be able to set up appointments to see them in the future.

Counsel for Dr. Beairsto also called two expert witnesses. The first, Ms Gail Siskind, is an experienced nurse educator with substantial administrative experience working in the health disciplines regulatory environment. She now works as an independent education consultant doing one-on-one counseling with health professionals from several disciplines who have been identified as having problems with respect to ethics, boundary issues in professional relationships, communication with patients and/or colleagues, and/or their conduct in health care settings.

Ms Siskind testified that Dr. Beairsto's Counsel had asked if she would be interested and available to provide an instructional program addressing boundaries and sexual abuse. Her stated purpose in working with Dr. Beairsto was to increase his understanding of boundary issues in clinical encounters and to identify some skills he could use to avoid problems. In preparing the education program, Ms Siskind was provided with the following documents:

- the 2010 ICRC Decision and Reasons regarding a complaint lodged by a different patient;
- College documents related to Patient A's allegations, including Patient A's and Dr. Beairsto's testimony, and the Committee's Decision and Reasons; and
- Patient A's victim impact statement.

Ms Siskind testified that she saw Dr. Beairsto for eight two to two and a half hour sessions approximately once every two weeks between November 16, 2016 and January 30, 2017. The purpose of the educational program was to:

- address the physician's learning needs and design remedial measures to improve his knowledge and understanding of boundaries and sexual abuse of patients;
- identify measures that he could put in place to ensure his practice would adhere to expected standards in the future.

The program involved his reflecting on his own clinical behaviour and on various articles on ethics, professionalism and boundary issues that she provided, and preparing written answers to specific questions she raised, which they would then discuss at subsequent sessions.

In addition to her final report to Dr. Beairsto's Counsel dated January 30, 2017, the Committee was also provided with copies of Ms Siskind's notes from the first four sessions, and copies of two versions of Dr. Beairsto's homework assignment from the January 26, 2017 session: an early version and a revised, more robust version.

Ms Siskind indicated that, early on, Dr. Beairsto described himself as "boundary ignorant" until 2010, and stated that "his schooling in boundaries started in 2010". Ms Siskind also noted that Dr. Beairsto stated that he did not change his practice after the boundaries course (Western University's course on "Understanding Boundaries and Managing Risks Inherent in the Doctor-Patient Relationship") and that he "didn't appreciate" the notes from the other workshop on boundary issues run by a Toronto-based GP psychotherapist. He also reported to Ms Siskind that he did not read Dialogue, the CPSO magazine for physician members, because he "felt sorry for the physicians" whose discipline proceedings were covered therein.

Ms Siskind testified that Dr. Beairsto did engage in the discussions about ethical principles, and that he hoped to avoid being self-defensive and arrogant as he acknowledged he had been during the liability hearing. She testified that he seemed to develop a better understanding of the power imbalance in the doctor-patient relationship and the need to have some formality in the doctor-patient relationship. She acknowledged that remediation is more difficult if the physician has a pattern of crossing boundaries for many years.

Second, Counsel for Dr. Beairsto called Dr. Derek Pallandi, a forensic psychiatrist, whose work involves treatment in the community, assessment and management in correctional institutions, and providing psychiatric assessments in the judicial system. The Committee accepted him as an expert witness.

Dr. Pallandi had been asked to address three questions:

1. Does Dr. Beairsto suffer from a mental health illness or diagnosable personality disorder relevant to the conduct he has been found guilty of?
2. Does Dr. Beairsto demonstrate an understanding of appropriate boundaries, an ability to respect these boundaries and an ability to govern himself according to the accepted standards of practice?
3. What if any management strategy do you recommend to ensure Dr. Beairsto respects boundaries in his involvement with patients?

Dr. Pallandi had been provided with the College documents related to Patient A's allegations and the 2010 ICRC Decision and Reasons, prior to or shortly after his first interview with Dr. Beairsto on October 7, 2016. Prior to his second interview with Dr. Beairsto on February 2, 2017, he was given a copy of Ms Siskind's report regarding the educational intervention.

Based on his two clinical evaluations of Dr. Beairsto (two and a half hours on the first occasion and one and a half hours on the second), Dr. Pallandi testified that Dr. Beairsto demonstrated no evidence of a psychiatric illness, personality disorder and/or sexual deviance.

With respect to Dr. Beairsto's professional behaviour, Dr. Pallandi opined that Dr. Beairsto "appeared to have developed at the very least an understanding of both the clear expectations upon his behaviour and a commitment to maintaining clear and unequivocal boundaries with patients", although Dr. Pallandi stated that Dr. Beairsto still had more work to do.

Dr. Pallandi suggested the following strategy to ensure that Dr. Beairsto respects boundaries in his future clinical encounters:

1. further education on boundary issues;
2. third party evaluation of his professional boundaries;
3. indirect psychotherapy supervision;
4. limiting his practice to psychotherapy.

Dr. Pallandi also reviewed the letters of support from patients. While noting the "unqualified and unequivocal support" for Dr. Beairsto in the letters, Dr. Pallandi also indicated that some of the letters reflect a doctor-patient relationship that "exceeds what might be considered a strictly professional, doctor-patient one and approached one bordering on friendship".

In response to a question by Dr. Beairsto's Counsel, Dr. Pallandi testified that he believed that Dr. Beairsto was willing to modify his behaviour going forward.

DECISION AND REASONS FOR PENALTY

Legal Framework

The Committee recognizes the well-established principles that a penalty for professional misconduct must reflect, with public safety being paramount. The chosen penalty must also address specific and general deterrence, as well as the need to maintain public confidence in the integrity of the profession and in the College's ability to regulate the profession effectively in the public interest.

While the Committee accepts the principle that like cases should be treated alike, the Committee also recognizes that each case needs to be decided based on the particular facts of the case. The Committee also recognizes that increases in penalty ranges can be justified depending on the specific facts of a case and/or when changing social values require greater denunciation. The court's jurisprudence indicates that the law must evolve to reflect changing social values (see *R. v. Lacasse,* 2015 SCC 64, and *R. v. Klimovich,* 2012 ONSC 1202).

The Committee reflected on the court's reasoning in two recent appeals to the Divisional Court of other Discipline Committee decisions regarding sexual abuse. The 2017 decision *CPSO v. McIntyre*, 2017 ONSC 116 reinforced for the Committee that revocation is "a serious penalty but that it is not reserved for only the most serious misconduct". That ruling also highlighted that discipline committees are not required to impose the "least onerous and restrictive sanction". The Court stated that the "College's actions are taken to serve and protect the public interest".

The second appeal was the 2017 case of *CPSO v. Peirovy*, 2017 ONSC 136, in which the Divisional Court addressed the need to ensure that penalties in cases of sexual abuse by physicians adequately reflect society's values and expectations.

The Committee carefully considered the detailed submissions made with respect to the recent *RHPA* amendments. The Committee recognizes that any discipline case remains open until its decision and reasons are released. The Committee is persuaded that applying these amendments to this case is appropriate, given the paramount focus of discipline matters on public protection. In addition, the Committee appreciates that the nature of the misconduct did not change with these amendments; the amendments speak to the available penalty options and the range of conduct that would be subject to mandatory revocation.

Aggravating Factors

In their deliberations, the Committee considered several aggravating factors.
First, the Committee noted that Dr. Beairsto crossed and violated boundaries in his professional relationship with Patient A in a number of ways, over an extended period of time, and had little insight as to how his behaviour affected her, both at the time and up to his interactions with Ms Siskind in January 2017.

Second, the Committee was concerned that this was not the first time that Dr. Beairsto's conduct with vulnerable patients had been brought to the attention of the College. The Committee noted that the Inquiries, Complaints and Report Committee ("ICRC") had

determined in 2010 that Dr. Beairsto had engaged in serious boundary violations with a different psychotherapy patient. As part of that process, Dr. Beairsto had been given the opportunity to review and comment on the expert's initial report. Dr. Beairsto failed to "address the various boundary violations raised in the report". The disposition of that complaint included a verbal caution to Dr. Beairsto and his signing an undertaking to:

- stop seeing patients with diagnoses of certain significant personality disorders;
- limit his practice hours;
- separate physical examinations of patients from psychotherapy sessions;
- participate in a psychotherapy support group;
- pursue CPD in record-keeping and prescribing;
- agree to be reassessed twelve months later.

The obvious overlaps between these two cases in terms of both Dr. Beairsto's conduct and his response to College processes made the Committee question what Dr. Beairsto had learned from these experiences.

Third, the Committee was surprised that Dr. Beairsto did not seek out opportunities to learn more about maintaining appropriate boundary issues earlier, given that the Committee's decision and reasons on finding were released in early August 2016. He did not begin his remediation on boundary issues until November 15, 2016, after his certificate of registration had been suspended as a condition of the penalty hearing adjournment from November 8 and 11, 2016, until March 2017 at his request.

Fourth, the Committee was troubled to hear that Dr. Beairsto showed little insight into boundary issues until he began Ms Siskind's educational sessions. He continued to practise in the same manner and in the same physical setting, with no colleagues or staff present. The Committee was concerned that in reflecting on the findings of both the ICRC and this Committee, using the ethical framework offered by Ms Siskind and a boundary issues lens, he still described his patients as partly responsible for his difficulties with the College.

While the Committee heard from both Ms Siskind and Dr. Pallandi that Dr. Beairsto's understanding of boundary issues had increased in the twelve weeks following his suspension, the Committee recognized that it is not possible to know if this learning would actually be reflected in his actual day-to-day interactions with patients in the future. The Committee is not persuaded that Dr. Beairsto has now been "thoroughly schooled on the expectations and standards of the profession and the reasons and philosophies behind those standards", as his Counsel asserts.

With respect to the character evidence admitted, provided by patients, either through direct testimony or letters, the Committee gave little weight to this evidence, given that these patients lacked knowledge of the incidents being considered, and that the sexual abuse and other elements of professional misconduct, which Dr. Beairsto was found to have engaged in, occurred in private.

Recognizing its paramount responsibility to protect the public, the Committee considered other options that might address Dr. Beairsto's need for further education and time to reflect on boundary issues, as well as the need for ongoing monitoring and supervision of his clinical practice. In particular, the Committee asked Counsel to comment on the possibility of a further eight month suspension (over and above the time served since the November 2016 suspension); continuing education with Ms Siskind until she deemed him ready to return to work; a re-assessment by Dr. Pallandi prior to a return to work; videotaping of all clinical encounters; and monthly supervision to include video review.

The Committee received submissions from Counsel regarding these options, as well as ILC advice on these submissions. Counsel for both the College and for Dr. Beairsto submitted that determination of the length of suspension is a responsibility of the Committee, which cannot be delegated to anyone else. ILC agreed. College Counsel questioned whether videotaping could be relied on to protect patient safety, given the College's experience in the *CPSO v. Porter* (2016) case, where a physician managed to sexually abuse a patient despite the video camera installed in his office. Dr. Beairsto's Counsel submitted that videotaping would be neither "necessary nor reasonable", and questioned whether patients would feel as

comfortable speaking with Dr. Beairsto if they knew the encounter was being videotaped. ILC advised the Committee that it would be within their mandate to order videotaping if the Committee deemed it appropriate and necessary.

The Committee has carefully reviewed both the initial and the two sets of supplementary submissions on penalty. The Committee remains concerned about the multiple and ongoing boundary violations with Patient A despite Dr. Beairsto's previous experience with the ICRC around boundary violations and his participation in two robust workshops on maintaining appropriate boundaries. The Committee was dismayed to read in Ms Siskind's report that Dr. Beairsto did not change his practice despite the boundary training he had taken before seeing her. The Committee accepts that Dr. Beairsto has made progress in his understanding of boundary issues over the course of his eight sessions with Ms Siskind, but the Committee is concerned that his description of his current situation with the College still lays much of the blame with the patient herself. Given the recency of his education and his minimal interactions with professional colleagues, the Committee remains concerned about how well this learning would be incorporated into future interactions with patients.

The Committee has significant concerns regarding Dr. Beairsto's responses to both Patient A's allegations and the ICRC matter, and notes that both experts recommend he undertake further education regarding boundary issues. The Committee appreciates that touching of the buttocks is now one element of sexual abuse which is subject to mandatory revocation, whereas prior to these amendments, it was within the Committee's discretion to order revocation when deemed appropriate. After careful consideration of the evidence and the legal arguments presented, the Committee is persuaded that revocation of Dr. Beairsto's certificate of registration is required to address public safety, even without the recent *RHPA* amendments. That was the view of the Committee before taking into account the amendments made, and that continues to reflect the view of the Committee. Accepting that the amendments have retrospective effect for the reason given, the Committee understands that revocation is not only the order which it considers appropriate, but is mandatory.

ORDER

Therefore, the Committee orders and directs:

1. The Registrar to revoke Dr. Beairsto's certificate of registration, effective immediately.

2. Dr. Beairsto to appear before the Committee to be reprimanded, within three months of the date this Order becomes final.

3. Dr. Beairsto to reimburse the College for funding for the patient under the program required under s.85.7, in the amount of $16,060.00, and to post a letter of credit acceptable to the College to guarantee the payment of any amount he may be required to reimburse, within 30 days of the date this Order becomes final.

4. Dr. Beairsto to pay to the College costs in the amount of $24,420.00, within 30 days of the date of this Order.