

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Roman Feigel, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names of Patients A and B or any information that could identify them under subsection 47(1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

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

Every person who contravenes an order made under ... section 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. Feigel,
2018 ONCPSD 27**

**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. ROMAN FEIGEL

PANEL MEMBERS:

**DR. C. CLAPPERTON (CHAIR)
MR. J. LANGS
DR. T. MORIARITY
DR. S. WOODER**

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

MS B. DAVIES

COUNSEL FOR DR. FEIGEL:

**MR. W.B. BRYNAERT
MR. M. FAASEN**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. G. FORREST

Hearing Dates: September 12-15 and September 26, 2017
Decision Date: June 11, 2018
Release of Written Reasons: June 11, 2018

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 September 12 to 15 and September 26, 2017. At the conclusion of the hearing, the Committee reserved its decision on finding.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Roman Feigel 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 has engaged in the sexual abuse of patients; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991 (“O. Reg. 856/93”), in that he has engaged in 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 ALLEGATIONS

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

BACKGROUND

Dr. Roman Feigel is a 72 year old physician who has an obstetrics and gynecology practice in Ottawa. The allegations of sexual abuse and disgraceful, dishonourable or unprofessional conduct arise from alleged remarks and, in one instance, a gesture, made by Dr. Feigel during appointments with two patients, Patient A and Patient B.

During an appointment with Patient A in January 2014, Dr. Feigel allegedly called her sexy three times and asked her if she was “entertaining herself” while he was making an up and down motion with his hand near his hip that suggested masturbation. It is also alleged that in the preceding two or three years, Dr. Feigel called Patient A sexy and told her she had a nice tummy during medical appointments.

During an appointment with Patient B in February 2014, Dr. Feigel allegedly said she was gorgeous and beautiful and during the breast examination said that she had lovely breasts, asked whether her nipples were sensitive and whether she liked it when her husband sucked on them. Also, Dr. Feigel allegedly said during an abdominal examination that her navel ring was so sexy and during a speculum examination that she had plenty of her own lubrication just as he thought and her vagina was lovely and smelled sweet.

It is important to make it clear at the outset that while Patient B raised questions or concerns about certain physical aspects of the nipple examination portion of the breast examination and the bimanual part of the pelvic examination, there were no allegations before the Committee regarding the appropriateness or physical aspects of the breast, abdominal or pelvic examinations. The Committee considered the breast, abdominal and vaginal examinations as the circumstances in which the alleged remarks were made and also in relation to the assessment of witness credibility. The allegations in relation to Patient B relate to Dr. Feigel’s alleged remarks during the course of these examinations.

THE ISSUES

This case raises two primary issues:

1. Did Dr. Feigel engage in the sexual abuse of patients?
 - a) In relation to Patient A, during an appointment in January 2014, by making comments of a sexual nature to Patient A, by touching, rubbing or gesturing

towards his groin area while making comments of a sexual nature to her; or by making comments of a sexual nature to Patient A during other medical appointments.

- b) In relation to Patient B, during an appointment in February 2014, by making comments of a sexual nature to Patient B;
2. Did Dr. Feigel engage in an act or omission that would be reasonably regarded by members as disgraceful, dishonourable or unprofessional by making comments and a gesture of a sexual nature and/or inappropriate comments to Patient A and/or by making comments of a sexual nature and/or inappropriate comments to Patient B?

THE EVIDENCE

The Committee heard testimony from five witnesses: Patient A, Patient B, Ms. X (an administrative assistant who worked in the same office as Patient A), Dr. Roman Feigel and Ms. Cathy Turner (the receptionist/administrative assistant at Dr. Feigel's office). The Committee also had photographs and a video of Dr. Feigel's office, Dr. Feigel's clinical notes for the last few years for Patient A and the clinical record for Patient B.

Patient A

Patient A is a woman in her 50s. She has worked for the last two years as a medical administrative assistant for a doctor. She was born in another country and came to Canada several decades ago. She speaks her first language and some of another and learned English after coming to Canada.

Patient A testified that her family doctor referred her to Dr. Feigel approximately 20 years ago because of concern regarding fibroids and ovarian cysts. She saw Dr. Feigel once or twice a year until her last appointment in January 2014, the date of the incident in

question. When Patient A began seeing Dr. Feigel, they spoke mostly in her first language; over time, as Patient A became more comfortable speaking in English, they switched to speaking mainly in English.

Patient A testified that at the January 2014 visit, she saw Dr. Feigel in his consultation room, which had a desk and chairs and no examination table. The appointment lasted about 10 to 15 minutes and they discussed her recent ultrasound. She did not have a physical examination on that visit.

Patient A stated that at the end of the visit when she was ready to leave the office, they stood together and talked. The consultation room door was still closed. Dr. Feigel wished her “Happy New Year” while holding one of her hands. She testified that she was “pretty sure” that he told her she was sexy three times during this time. Patient A testified that Dr. Feigel was holding one of her hands and asked her if she was “entertaining” herself while making an “up and down gesture” on his own body close to his hips. She believed that this question, in combination with his hand gesture, was meant to ask if she was engaging in masturbation.

Patient A testified that on this visit, she did not understand why Dr. Feigel would have asked her if she was masturbating when she had given him no reason to ask this question. Patient A testified that she had never discussed details of her sex life with Dr. Feigel. She said she felt very uncomfortable with the “entertaining herself” question and did not answer. She felt it was inappropriate for him to tell her that she was “sexy” and felt that he was holding her hand too long. She said she felt very uncomfortable with the whole interaction.

In Dr. Feigel’s medical notes regarding Patient A, there were some notations of “decreased sex drive.” In examination in chief, she said she had never discussed her personal sex life with Dr. Feigel. She clarified and said it is possible he asked her about her sex drive at one or two visits but beyond this there had been no discussion of her sex life. She said she would never think questions regarding her sexuality were unnecessarily

intrusive given that he was her gynecologist, but merely said her sexuality was not discussed. Patient A also acknowledged she did not think Dr. Feigel knew she is gay. She said they never discussed this.

Patient A testified that in the few years before her last visit with Dr. Feigel, he occasionally made other comments to her about having a “nice belly” or “nice tummy” and about being “sexy.” She testified that the comments about her tummy occurred while Dr. Feigel was performing her physical examination. She did not specify whether the comments that she was “sexy” were made during a physical examination. Patient A testified that prior to the last appointment, she had dismissed these comments, thinking initially he was trying to make her feel comfortable even though she felt uncomfortable when he said these things to her.

Patient A testified that she told the police that she thought Dr. Feigel’s comments to her prior to January 2014 were due to his “weird sense of humour.” However, Patient A testified that the comment about “entertaining herself” at the January 2014 appointment “crossed the line” and she found Dr. Feigel’s comments that last day shocking, intrusive and inappropriate.

Patient A testified that Dr. Feigel never touched her in a way that made her feel uncomfortable prior to the last appointment. She testified that she continued to see him because she felt he was a good physician and a good gynecologist. She now feels that perhaps she should have gone to see another doctor.

Patient A testified that after her January 2014 appointment, she returned to her work place. At the time, Patient A worked as an administrative assistant for a group of general practitioners, including Dr. Y. Other staff in the office consisted of a nurse, another administrative assistant (Ms X) and another office person.

Patient A testified that she told her work colleagues, Ms X and the nurse, what had happened at the visit with Dr. Feigel. She could not be certain but she thinks Dr. Y might have been present, as well.

Patient A stated she knows Patient B because Patient B was a patient in Dr. Y's office during the time she worked for Dr. Y. She had occasion to speak to Patient B in her capacity as Dr. Y's administrative assistant but she had never spoken to her privately. She never discussed with Patient B what happened between herself and Dr. Feigel or what happened between Patient B and Dr. Feigel. She did not recall Dr. Y telling her any of the details of what happened to Patient B but she recalled the complaint of Patient B being about inappropriate touching of her breasts.

Patient A testified that she came to know that Patient B had made a complaint against Dr. Feigel because Dr. Y told her this in order to encourage her to speak to the police about her own experience with Dr. Feigel. She recalled speaking to the police a few months after the January 2014 visit.

Although Patient A testified that she had not spoken to the nurse in Dr. Y's office or Ms. X about what happened at her January 2014 appointment with Dr. Feigel after the initial conversation that day, Ms X, she acknowledged in cross-examination that she had made an error in her evidence in chief. According to her statement made to the police, she had spoken again to about Dr. Feigel, approximately one month after 2014, after Patient B had called Dr. Y's office to complain about what had happened to her. She testified that she does not recall what Ms X told her.

In May 2014, Patient A made a complaint to the College regarding Dr. Feigel after encouragement to do so by Dr. Y, who told her it was the right thing to do.

However, three years later, on March 12, 2017, Patient A emailed a lawyer at the College to withdraw her complaint against Dr. Feigel. She stated the reason for this was she wanted to avoid the unpleasantness of testifying and given it had happened a long time

ago, she did not want to think about it anymore. She said she did not contact the College to withdraw her complaint because what she had originally said was untrue. She affirmed that what she said in her complaint was true. Patient A testified that she had asked to withdraw her complaint because she just wanted to forget the whole thing.

On cross-examination, Patient A acknowledged she had been upset when she was advised she could not withdraw her complaint and when she was subsequently subpoenaed and felt she had no choice but to appear and testify. Patient A stated that she felt she had a duty to appear at the hearing. She reiterated that she believed that Dr. Feigel was a good gynecologist and she did not feel he deserved legal or criminal charges against him. Patient A also stated part of her reason for coming to testify was she hoped Dr. Feigel would not make inappropriate comments to other females.

The issue of what could be heard in the office was asked of all of the witnesses with the exception of Ms X. Similar to the rest of the witnesses, Patient A stated that she could sometimes hear the sound of conversations but not what was being said.

Patient A stated she did not think Dr. Feigel's notes were very accurate. He had made an error in noting a family member's history of ovarian cancer. This was incorrect in that her family member had colon cancer. When counsel pointed out that her original family doctor told Dr. Feigel in her referral note to him that her family member had had ovarian cancer, Patient A acknowledged this but said she had seen Dr. Feigel for about 20 years and she had raised her concern regarding her family member's colon cancer on several occasions. Given they had discussed this after her initial visit with him, she felt this should have been corrected in her record.

Patient A was asked about a comment written in Dr. Feigel's notes regarding "stress in the office." She denied any recollection of ever having discussed stress at work with him. She acknowledged he may have asked her about this but she had no recollection of this.

Patient A knew Ms. Turner, Dr. Feigel's secretary, as they both worked for physicians and occasionally, they would encounter each other and exchange work experiences but had no particular relationship other than episodic social exchanges. Patient A testified that she went to see Ms. Turner to ask her if she knew of any other jobs as she was unhappy working in Dr. Y's office. She said that Ms. Turner subsequently contacted her about a job opening.

Patient B

Patient B is a female in her 50s. She works part-time doing administrative work and community outreach and has her own business.

Patient B was referred to Dr. Feigel by her family doctor, Dr. Y, because of possible polyps and for an endometrial biopsy. Dr. Y told her Dr. Feigel saw patients quickly and that he was a "very in-your-face man." Patient B testified the statements made by Dr. Y suggested to her that Dr. Feigel "didn't mince words" and was a bit aggressive but that these comments did not stop her from going to see him. She felt this was irrelevant. She had not heard anything about any of Dr. Feigel's patients having concerns before she saw him.

Patient B saw Dr. Feigel in February 2014. She recalled checking in with the receptionist, giving her name and health card, but she could not recall if she had completed any paperwork at that time. She did not recall having any other conversation with Dr. Feigel's receptionist.

Patient B testified that she was shown into Dr. Feigel's consultation room after waiting about five minutes, but could not recall if it was the receptionist or Dr. Feigel himself who called her in. She was in the consultation room alone for a brief period of time before Dr. Feigel joined her. She was not able to hear anything going on in the other rooms in the office while in the waiting room or in the consultation room.

Patient B testified that Dr. Feigel closed the consultation room door when he entered the room. He had a file folder with him that she presumed had the consultation information sent by Dr. Y. They were in this room for approximately five minutes and during that time, they discussed the cysts seen on the ultrasound, the thickness of the lining of the uterus and concerns regarding the ultrasound findings including the potential for cancers. She could not recall if Dr. Feigel had asked her questions about her medical history. She stated that nothing unusual or of concern had happened while they were in the consultation room. He told her he wanted to examine her and then directed her to an examination room at the end of the hall.

Patient B testified that when they entered the examination room, he gave her a paper cover, told her to take everything off and lie down on the table. He left her alone in the examination room. She removed her clothing and laid down on the examination table and covered herself with the paper cover. This covered her from collarbone to knees.

Patient B testified that Dr. Feigel returned to the examination room. Patient B said he did not knock on the door or ask if she was ready, as most doctors do, but merely entered the room. She found this strange. Patient B denied that Dr. Feigel asked her to sit up while he took her blood pressure and testified that she remained supine the whole time.

While Patient B was lying down on the examination table, Dr. Feigel entered the room, came to the table and stared at her. She described this as a “vile” stare. Patient B testified that he looked at her eyes and at her body for what seemed like a long time.

In cross-examination, Patient B was asked to describe what she had meant by a “vile stare.” It was suggested to her this meant Dr. Feigel was looking at her “intently” and she said that is not what she meant. She said his stare was “expressionless,” he was “staring directly into my eyes,” his “brow was furrowed,” “eyes glaring,” “cold.”

Patient B stated this was when things seemed to go wrong. Dr. Feigel pulled the paper cover down to just below her breasts. Patient B did not understand why he was doing a

breast exam. He had both hands on her breasts and said she had “lovely breasts.” Patient B testified she did not respond. Patient B testified that Dr. Feigel asked if she had “sensitive nipples” and if she liked it when her husband sucked her nipples. She did not respond. Patient B testified that while Dr. Feigel had one hand on each breast, he then took her nipples between his index fingers and thumbs and squeezed and rolled her nipples. Dr. Feigel did not say anything to her while he was doing this. Patient B testified she told him she did not understand what a breast exam had anything to do with suspected endometriosis. It was her recollection that Dr. Y had used the word endometriosis and she thought this might have been one of the conditions Dr. Y was concerned about. He did not respond to her question and had an “unfazed” look on his face. She felt “really distressed” and “really upset” and told him to “fuck off.” Shortly after she said this, Dr. Feigel took his hands away from her breasts.

During her testimony, Patient B said “f off.” Patient B was reluctant to use the words “fuck off” at the hearing until encouraged by College counsel to speak directly. She testified that she said this with an assertive tone but did not yell at him. Patient A testified that “fuck off” was not part of her normal vocabulary and she thought fear motivated her to use those words that she now viewed as “stupid.”

Patient B testified she could not recall for certain if Dr. Feigel had made the comments about her having “lovely breasts” while he was touching her breasts or while looking at them. She said he told her she was “gorgeous” and “beautiful” when he was staring at her before he examined her breasts.

Patient B testified that she has had many breast exams done in the past by Dr. Y, as part of her annual physical. Initially, Dr. Feigel’s breast examination was in keeping with what she had experienced previously, but the squeezing and rolling of her nipples was not, nor were the comments he made. Patient B said Dr. Feigel did not give her an explanation for touching her nipples in this way. She was angry and scared and said she said “fuck off” in a somewhat assertive tone but had not raised her voice or yelled.

Patient B testified that she did tell the police that she was enraged at the time as well as terrified.

Patient B testified Dr. Feigel then pulled the paper lower revealing her belly. He stared at her abdomen for a little while and said “God that’s sexy.” She felt scared and frustrated and said she did not know what he meant by this. Patient B testified Dr. Feigel then said “your navel ring is so sexy.” He had one hand on her abdomen and the other near her pubic area. She testified she then told him to “fuck off” for a second time. He took his hands away from her abdomen and went to the counter and got a speculum.

Patient B testified that while he was at the counter getting a speculum, she told Dr. Feigel she had had multiple hip surgeries in one year. He told her it would not be a problem, that they would not use stirrups for her pelvic examination and that they could get around this. He went to the end of the bed, separated her “vagina” and inserted the speculum telling her she has “plenty of her own lubrication just like (he) thought.” He told her she had a “lovely vagina” with a “sweet smell.” He told her the cyst on the cervix was gone. She tried to make conversation with him by asking questions about the cervical cyst. She said this did “not go well or too far.”

Patient B testified that Dr. Feigel then told her he was going to do an internal examination, or bimanual examination, meaning one hand was on the abdomen while two fingers were in the vagina. She testified that she could not recall exactly how long it took to conduct this part of the exam but said it seemed that it lasted longer than she had experienced with previous internal examinations. She acknowledged that previous bimanual examinations had not been done for polyps or endometriosis. Nor had they been done by a gynecologist.

Patient B testified that she didn’t know what he was doing and again told him a third time to “fuck off.” She “really wanted it to stop” and squirmed away until she moved enough that his fingers came out of the vagina. Patient B testified she did not recall telling the police that she did not think he was in the “right place.” She acknowledged that if she had

already told him to “fuck off” twice to this point that this may have affected her state of mind and perception of time.

Patient B testified that she brought her legs to the side of the bed and stood up with her back to the front of the bed and the paper covering her front. Patient B testified that Dr. Feigel came to her right side, tapped her on the buttocks twice and told her she would need an ultrasound in six weeks. She could not recall which hand he tapped her buttocks with.

Patient B testified that Dr. Feigel then opened the door to the examination room and left. She recalls the examination rooms being quite close together. As he was closing the door to her examination room, he was opening the examination room “kitty corner” to hers. She heard him say something like “how are you today” and then muffled talking in the other examination room next to her as she was dressing.

Patient B recalled feeling “horrible,” “numb,” “scared,” “disgusted.” She “wanted to get out as fast as [she] could.” She felt “filthy.” She “wondered what [she] had done to deserve that.” During the breast exam, she felt “terrified.” The questions he was asking here “were so disgusting.” The stare was “vile” and he was so “unfazed.” She did not get up and leave during the examination because she was “so scared” and “didn’t know where it was going.” She had trusted her family doctor that she was in good hands. She wanted to trust Dr. Feigel. She was “so scared” and “felt frozen.” She said “I guess I didn’t have the guts to do it,” “fear overcame me” and “it didn’t even enter my mind to do it,” meaning to get up and leave the office during the examination.

Patient B testified that she got dressed and left. She does not remember what happened after that. She does not remember if she spoke to Dr. Feigel’s receptionist but she said she did not have an appointment for the repeat ultrasound or any papers for this when she left Dr. Feigel’s office. She does remember getting into her car.

Patient B testified that her car was parked close to the exit door in the building's parking lot. Before she left the parking lot, she called Dr. Y's office. She quickly, in two minutes or less, told Ms X, Dr. Y's receptionist, what had happened at the visit with Dr. Feigel. She says Ms X told her she had been sexually assaulted and that she should not have had a breast examination. Ms X said she would speak to Dr. Y and Dr. Y would get back to her. Patient B testified that she called her husband on the way home. They were both extremely upset and spent the evening "going through everything." Patient B testified that she called the College to ascertain the protocol for making a complaint against Dr. Feigel. She wrote the letter to the College herself the day after the incident. Patient B said she knew nothing about any other complainant when she wrote her letter of complaint the day after the incident.

When shown photographs of Dr. Feigel's consultation room, Patient B identified this as the room she had been in with Dr. Feigel at the initial part of her February 2014 visit.

However, when shown a photo of an examination room in Dr. Feigel's office, she stated the room was similar but not identical to the examination room Dr. Feigel had taken her to. Patient B testified on cross-examination that she recalled a stool that Dr. Feigel had sat on in examination room number 2 at the space between the end of the examination table and the wall. She did not recall the rack of paper sheets on the wall. She remembered a lamp being at the foot of the examination table but does not remember whether or not he used the lamp. She agreed she had no way of knowing the distance between the wall and the foot of the bed. She agreed there was no stool in the photograph she was shown, but stated this room did not look exactly like the room she had been in with Dr. Feigel. Everything other than the stool and rack of paper covers on the wall looked the same. She did not recall there being a step in front of the examination table. She acknowledged there could have been a chair in the corner as in the photograph.

Patient B testified that she recalled there being more space at the foot of the examination table but she readily acknowledged from the photograph shown to her that with the end of the examination table up, there is no room for a stool. She was clear that she recalled Dr.

Feigel examining her from the foot of the examination table. She acknowledged if there was no stool in the room, he could not have been sitting on a stool to examine her. She was asked if she was suggesting he had somehow altered the configuration of the room to make it look like a stool would not fit and she said she was not saying that the room had been altered but simply telling the truth of what she recalled.

Patient B clarified she could not hear anything that was going on in other rooms when she was in the waiting room, waiting in the consultation room or waiting in the exam room.

Dr. Feigel's counsel suggested to Patient B that Dr. Feigel had never made any comments on her appearance and that she had adopted this into her statement when she found out about another complainant. Patient B testified that she did not recall Ms X telling her in the conversation they had right after her appointment with Dr. Feigel about another individual who had complained about Dr. Feigel.

Patient B testified she had never spoken about Dr. Feigel to anyone else in Dr. Y's office, other than Dr. Y, prior to the February 2014 visit nor had she heard anything about any of Dr. Feigel's patients having any issues or problems with him. Patient B stated that when she spoke to Ms X after her visit with Dr. Feigel, Ms. X did not tell her about anyone else who had had any issues, concerns or difficulties with Dr. Feigel. She became aware of at least one other complainant in this matter when she was told by Mr. Paul Lobsinger, an investigator at the College, that this was the case. Patient B said that she does not know who the other complainant or complainants are. She has never spoken to anyone who has had any problems or concerns with Dr. Feigel and she has never heard from any other source any information about any patient having problems or concerns with Dr. Feigel.

Patient B testified that she could not recall exactly what she had said to Ms X when she spoke to her after the alleged incident. Patient B said she asked Ms X if what she recounted to her about the visit seemed appropriate and Ms X said not at all and told Patient B she had been sexually assaulted. Patient B said she knew something

“untoward,” “awful,” “vile,” had happened but that she had not put the events together as a sexual assault.

Patient B recalled Ms X advising her that there had been no need for Dr. Feigel to do a breast exam. Patient B acknowledged that Ms X is not a doctor or nurse and would have no specific knowledge of the indications for a breast examination.

Patient B said she did not know why Dr. Feigel had done a breast examination. Patient B did not recall Dr. Feigel offering her a breast examination on the basis that she was a woman over 50 who had not had a mammogram. Patient B testified that she had had a recent mammogram. When asked if the breast examination could have been done looking for breast cancer, Patient B testified that Dr. Y took care of her breast examinations. Patient B did not recall Dr. Feigel offering her a breast examination, nor her agreeing to have a breast examination.

Patient B was asked if Ms X’s statement suggesting that she should not have had a breast examination had “set her off.” Patient B testified that it would not have set her off but it did contribute to how she felt about what had occurred. She said she supposed she might consider a breast examination she was not supposed to have as qualifying as a sexual assault. She agreed an examination by a physician under circumstances where she consented to a breast examination or pelvic examination would not constitute a sexual assault. She agreed that in previous breast examinations, her nipples were touched but not twisted, squeezed or rolled as Dr. Feigel had done. Patient B testified she had never experienced this as part of a breast examination in the past and considered what he did a sexual act.

Patient B acknowledged that she saw Ms X when she went to the office to see Dr. Y following the incident. Patient B testified she did not recall Ms X telling her Dr. Feigel had done something to another patient. She acknowledged it was possible that Ms X may have told her Dr. Feigel was a “bad guy” or something like that, but she had no memory of this occurring.

In her report to the police, Patient B had said she could hear conversation. Patient B clarified that she could hear muffled conversation and again no specific words. She denied that she had testified that she could not hear specific words to bolster no one hearing her say “fuck off” to Dr. Feigel three times. Patient B testified she felt both enraged and scared by Dr. Feigel’s actions and that she was “terrified of him.” She acknowledged that she would not have been happy that Dr. Feigel did not listen to her and stop when she told him to “fuck off” a second time, but she said she did not raise her voice but “talked through her teeth” when she told him to “fuck off” a third time.

Patient B testified that when she stood up from the examination table, Dr. Feigel was standing at the counter beside her. He tapped her lightly on the buttocks twice with his hand. She did not know if he was looking at her when he did this as she said she was not looking at him. She did not get dressed until he left the room. When asked why she did not get up off the examination table sooner, she testified she had not done so “for many reasons.” She “felt frozen”, “was “shocked” and she “was scared.”

Patient B testified that she recalled seeing Dr. Feigel open the door to the next examination room as he closed hers. She was standing by the chair. She recalled the other examination room being “kitty corner” to her room. She acknowledged she was not dressed and that she was not in the hall as Dr. Feigel was leaving the examination room they were in. She acknowledged she could have been mistaken and she acknowledged having an imperfect memory.

Patient B acknowledged that Dr. Y had supported her in making a complaint to the College and she said Dr. Y believed her account of what had happened at the visit with Dr. Feigel. While Patient B did not recall speaking to Dr. Y on the phone after the incident, she did recall meeting with her in Dr. Y’s office shortly after the incident. Dr. Y had noted that Patient B said when Dr. Feigel did her pelvic examination, it did not feel as though Dr. Feigel was “in the right spot.” Patient B acknowledged on cross-examination that she “wouldn’t know the right spot.” She agreed this contributed to her feelings of being under a great deal of stress at the time.

Patient B was asked about the discrepancy in Dr. Y's notes that record Patient B telling Dr. Y she told Dr. Feigel to "get your fucking hands off my breasts." In Dr. Y's note, there were quotation marks around this statement. Patient B agreed Dr. Y would not make things up in her note and that she would expect Dr. Y's notes to be fairly accurate. Patient B stated she had not said this to Dr. Feigel but had told him to "fuck off." She said this was meant to say "get lost" or "stop it."

Patient B acknowledged that she is a strong person and that it takes a strong person to say "fuck off" to a doctor three times. She stated that she was "not proud of that" and that "it was stupid" and had been motivated by fear. She wanted him to stop what he was doing.

Ms X

Ms X works as an administrative assistant / receptionist for a group of physicians that includes Dr. Y. She has held this position for fifteen years. Ms X knows who Dr. Feigel is but does not know him personally.

Evidence of Ms X regarding Patient A

In January to March of 2014, Ms X worked with Patient A, who was also working as an administrative assistant / receptionist in Dr. Y's office. Patient A left Dr. Y's employ approximately two and a half years ago. Ms Y testified that she has had no contact with Patient A since she stopped working for Dr. Y.

Ms. Y testified she spoke to Patient A on two or three occasions about Dr. Feigel. She did not recall specific dates but said these discussions took place over the two years they worked together. She recalled Patient A coming back to work after having seen Dr. Feigel for a medical appointment and Patient A mentioning she felt uncomfortable about her appointment because of something Dr. Feigel said or did. She could not recall the details.

Ms X testified she had no memory of Patient A telling her Dr. Feigel had used the word “sexy” to her. She said it was possible.

Ms X testified it was possible she had a conversation with Patient A about Patient B when Patient A returned to work on the Monday following the incident with Patient B but she has no memory of this. She maintained she had no memory of telling Patient B about what she knew about Patient A.

Ms X recalled speaking to Paul Lobsinger, the investigator from the College, about Patient A in July 2014 and told him that Patient A had told her that Dr. Feigel patted her on the bottom. Ms X did not believe that what she had told Mr. Lobsinger regarding the patting of the bottom actually pertained to Patient B and not Patient A.

Evidence of Ms X regarding Patient B

Ms X testified that she knows Patient B because Patient B has been a patient of Dr. Y’s since Dr. Y opened her practice in 2002. Ms Y has had no contact with Patient B in any other capacity beyond Patient B’s attendance at Dr. Y’s office. She did not know how often Patient B had seen Dr. Y but thought likely on an annual basis for physical exams. Ms X had limited interaction with her other than when she would check in for an appointment. She was not involved in the process of Patient B’s referral to Dr. Feigel nor had she spoken to Patient B about Dr. Feigel prior to Patient B’s appointment with him. Ms X testified that Patient B called the office and spoke to her on the date of Patient B’s appointment with Dr. Feigel, as she was the only receptionist that day. Ms X testified that Patient B called as she was leaving Dr. Feigel’s office, or when she was in her car following the appointment with Dr. Feigel.

Ms X testified that Patient B told her that she had her appointment with Dr. Feigel and did not feel right about it. Patient B wondered if she was overreacting and wanted to express her concerns.

Ms X testified that she did not recall the specifics of what Patient B told her that day. She acknowledged that the alleged incident had happened a long time ago. She testified that she had read the police report that recorded what she had told the police and that this had helped to refresh her memory.

From the police reports, Ms X testified she recalled Patient B telling her that Dr. Feigel had told her she had “beautiful breasts,” she was “sexy” because she had a navel ring, she had a “beautiful vagina,” he patted her on the bottom when she was leaving and he examined her breasts in a way that made her feel uncomfortable.

Ms X testified she recalled Patient B saying she was “creeped out by the appointment.” She agreed with Patient B that the behaviour she was describing was inappropriate. Ms X testified she suggested Patient B should perhaps make a report to the College. She told Patient B she should speak to Dr. Y and that she would relay the information to her. Ms X spoke to Dr. Y at the end of the day when she finished seeing patients. Ms X perceived Patient B to be upset when she spoke to her on the phone the day of the visit with Dr. Feigel.

Ms X did not remember the sequence of what Patient B had told her happened at the visit with Dr. Feigel. Ms X thought it was unusual to perform a breast examination at a gynecological appointment, but she did not think she would have told Patient B that a breast examination was inappropriate.

Ms X was cross-examined at some length about the use of the term inappropriate as opposed to unusual. Ms X testified she did think that everything Patient B told her about the appointment was inappropriate - the breast examination and saying she had beautiful breasts, telling her she was sexy, had a beautiful vagina and patting her on the bottom. Ms X said that she felt that it was unusual to have a breast examination and inappropriate for Dr. Feigel to say her breasts were beautiful. Ms X indicated that the description Patient B gave of the way Dr. Feigel had touched her breasts, specifically the pinching of the nipples, she felt was inappropriate.

Ms X testified Patient B was upset by the incident as a whole but she did not think any one thing had upset her more.

Ms X recalled Patient B specifically used the words “sexy” and “beautiful” in what she told her Dr. Feigel had said to her.

Ms X has seen Patient B since the visit to Dr. Feigel but stated they had not spoken about this again. Ms X had no memory of sharing what Patient A had told her about Dr. Feigel with Patient B, and she did not think she would have done so because this was the personal business of her colleague, Patient A.

Ms X testified that she did not tell Patient A about the conversation with Patient B the day Patient B called because Patient A was on holidays and not working in Dr. Y’s office that day. She does not recall telling Patient A about Patient B when she returned from holidays. Ms X did not tell Dr. Y about what Patient A had told her about her visits with Dr. Feigel and she did not know if Dr. Y knew about this.

Dr. Feigel

Dr. Feigel is a 72 year old practising obstetrician and gynecologist. He was born in another country, graduated from medical school in 1970 and moved to Canada in 1972. He passed his foreign medical graduate examinations in 1973, did two years of family medicine training and then a four year residency in obstetrics and gynecology at University of Ottawa. He started practising in 1980.

Dr. Feigel testified on cross-examination that he has 30,000 active patients at present and had 25,000 active patients in 2014. He sees approximately 40 to 60 patients per day from Monday to Thursday working six hours per day from 8:30 a.m. to 3:30 p.m. or eight to ten patients per hour. Dr. Feigel usually spends Friday in the operating room. He has one assistant, Cathy Turner, and no nurse.

In cross-examination, Dr. Feigel testified that it was not true that he did not spend much time with any single patient. However, when taken to the transcript of his interview with the police, he told them that he did not have time to “leer” at someone as Patient B had alleged. He told them that when he comes into the room to examine a patient, he did his “stuff” as he had other patients waiting in the waiting room. Patient B was not his only patient and he did not spend much time with her. He spent the same amount of time with her as with anyone else. Dr. Feigel subsequently agreed with his statement to the police that he did not have much time with any patient.

Dr. Feigel testified about his office lay-out and the Committee received a video as well as photos of it. The interior has not changed in 34 years and consists of a small waiting room, a registration area, two small examination rooms, a consultation room with his desk, and a counter top work area near where his secretary, Ms. Turner, sits. A small bathroom is located beside the consultation room.

Dr. Feigel testified that when he examines a patient, he has the patient sitting, initially, on the examination table facing him. For vaginal examinations, the patient will lie down with their heels on the examination table and the light on at the end of the table. He stands on the right side (at the front) of the table. In examination room 2, where he usually examines his gynecological patients, the end of the table is rusted and cannot be lowered. He does not use stirrups to do his pelvic examinations. He stands where the “crack” in the table is or where the mobile end of the table meets the fixed end of the table.

Dr. Feigel testified that he never performs an examination from the foot of the examination table as there is not enough space for him to do so. The floor light sits in this space and it is “impossible” for him to examine a patient from this position. The measurement from the end of the table to the wall is approximately 11 inches.

From photographs taken of his office, as an indicator of the distance between rooms, he confirmed the diagonal measurement of one of the large floor tiles shown is 17 inches.

There are three tiles between the entrance to examination room 1 and examination room 2. He stated that it would take him three steps to get from examination room 2 to examination room 1.

Dr. Feigel testified that he has a special interest in breast cancer as it has affected his family. He testified that about half of his patients want an examination of their breasts for breast cancer. In the last two months, he testified that he has found six breast cancers and countless in his years of practice.

Evidence of Dr. Feigel regarding Patient A

Dr. Feigel testified in examination in chief that he remembers Patient A because she is from the same country as him and they communicated in their first language at her earlier visits and later in mixed English and their first language. Patient A was a patient for about 20 years and she worked in Dr. Y's office.

Patient A was referred by her family doctor, in 1993 and was last treated in January 2014. She was originally seen for recurrent ovarian cysts and polycystic ovaries. Dr. Feigel testified that he saw Patient A roughly on an annual basis for a "check and pap tests." Dr. Feigel testified that she had frequent ultrasounds, as her family member had died of ovarian cancer in her 30s.

Dr. Feigel acknowledged that he had no specific memory of wishing Patient A "Happy New Year" at the January 2014 visit. He testified he was assuming that he had done so; if he had felt compelled to do so, it would have been because they are both from the same country.

Dr. Feigel testified that his recollection of Patient A's visits was "very vague." He testified that he had no memory of encounters with Patient A and could only refer to the contents of his chart.

In cross-examination, Dr. Feigel testified that he did not recall being asked about Patient A by the police. He told the police he did not know who she was and explained this by saying he had so many patients, that he remembers faces and not names and that there was “nothing special about her.” He agreed that he would not recognize her on the street. He doesn’t recognize most of his patients who he sees in public places.

In the note from the January 2014 visit, there is a notation that reads “stress in the office.” Dr. Feigel said this referred to Patient A’s stress at work because of the environment she worked in. She was not “treated properly” by the English-speaking people at her office. In cross- examination, Dr. Feigel acknowledged that he had no memory of Patient A having difficulties in the office she worked in and that Ms. Turner told him about this.

Dr. Feigel testified that he did not remember telling Patient A she had a “nice tummy” or “nice belly.” He testified if he ever said this to a patient, it would be to make them feel comfortable.

Dr. Feigel denied that he would have complimented Patient A on her appearance and denied telling her she “looked sexy.” He testified he never compliments his patients on their appearance.

In Dr. Feigel’s evidence in chief, he said he has told patients they have a “nice tummy.” He reasoned that this is not a compliment, that “tummy” is a medical term and that he says this to pregnant patients who have just had a baby and have lost weight. He testified this does not mean anything, is just a statement, is not a compliment and is just something that makes the patient feel good.

In Dr. Feigel’s statement to the police in 2014, he told them that he only compliments patients after they have delivered a baby. He might say, “you look really nice,” “you have lost weight,” “you look fit,” or “you look wonderful.” He would not do this often and would only compliment pregnant patients. He subsequently retracted the statement that he would tell patients they look “wonderful.” He denied telling patients they look

beautiful. In the context of a patient having a well-healed C-section incision, he would say you have a “nice tummy” to make them feel good.

While Dr. Feigel acknowledged that some menopausal patients also feel uncomfortable about their appearance, he denied ever complimenting them in a similar manner.

Dr. Feigel denied asking Patient A about “entertaining herself” and making a gesture to indicate masturbation. He said Patient A had a history of recurrent vaginal infections that may be associated with menopause and the use of sex toys. He said Patient A had a history of painful intercourse and was allergic to sex toys and that he may have asked her about alternative sexual activities. However, on cross examination, he agreed he had no memory of any conversation about masturbating. He also agreed that the last note about vaginal infections was 15 years earlier. He agreed there was no clinical reason to discuss masturbation at the January 2014 visit and denied that he did so. He also denied that he never asked her about masturbation prior to January 2014 and stated he would not chart his discussion. Dr. Feigel testified that he did not know Patient A was gay until she testified at the hearing.

Dr. Feigel denied using hand gestures with patients when discussing masturbation. He stated that Patient A had never told him she was uncomfortable with him nor had she left him with this impression.

Dr. Feigel denied making an error in documenting Patient A’s family member as having had ovarian cancer. He said he would ask about family history at a patient’s first visit and for Patient A, there was no mention ever of a family history of colon cancer or other cancers. The original referral note from Patient A’s family doctor mentioned ovarian cancer and he said this information would have come from Patient A as well. He suggested that Patient A herself had provided incorrect information to him about her family member’s history of cancer. He said in over 20 years as a patient, she had never corrected this and he had no reason to ask her about her family history after her first visit. Dr. Feigel said he was one hundred percent sure she had never mentioned a family

history of colon a cancer to him or he would have insisted she have a colonoscopy more frequently.

In his evidence in chief, Dr. Feigel stated he did not discuss masturbation with Patient A at the January 2014 visit. On cross-examination, he said he had no memory other than what is in the chart. He then testified based on what he read in his note that he would have no reason to discuss masturbation on that appointment. Dr. Feigel remembered nothing happening at the January 2014 visit to cause Patient A to stop seeing him after over 20 years as a patient.

Evidence of Dr. Feigel regarding Patient B

Dr. Feigel testified he remembered Patient B because of what happened after her visit on February 2014.

Dr. Feigel testified he recalls the visit as a routine assessment for post-menopausal bleeding and polyps. There were “no interruptions or drama.” The day following Patient B’s appointment while he was in the operating room, he received a call from the chief of the hospital and the chief of obstetrics. He was advised he had sexually assaulted a patient and could not be on call. Half an hour later, he was given the name of the patient making the accusation. He said he had no recollection of the visit whatsoever. Dr. Feigel said that seeing her give evidence at the hearing did not bring back any recollection.

Dr. Feigel testified that he told the truth in his statement to the police. In the police report, he told the interviewing officer that he didn’t have time to “leer” at Patient B as she had suggested. His waiting room was always full of patients and he spent the same amount of time with Patient B as every other patient. He acknowledged that if he was seeing 8 to 10 patients per hour, he did not have much time to spend with each patient.

Dr. Feigel acknowledged in cross-examination talking to the police about what Dr. Y had written in her own notes regarding Patient B. He said the notations were “all sick” and he

was angry about what she had written. He also acknowledged referring to Patient B as a “crazy chickie” in his statement to the police.

Dr. Feigel was shown the medical records of Patient B. He said he would have read the consultation request letter from Dr. Y at the time he saw Patient B. Dr. Y referred Patient B to Dr. Feigel for post-menopausal bleeding and an endometrial biopsy. Her ultrasound showed an ovarian cyst.

Dr. Feigel estimated he would have spent five to ten minutes with Patient B in the consultation room. When finished, he told her to go to examination room 2.

In his evidence in chief, Dr. Feigel testified that he told Patient B she should have a mammogram. On cross-examination, he testified this would have occurred at the beginning of her encounter when she was in his consultation room.

Dr. Feigel said that Patient B was a female in her 50s at the time, was a smoker and had not had children. She was very high risk for breast cancer in his opinion. He told her this and that she should have a mammogram done every two years.

Dr. Feigel testified in cross-examination that while he does arrange mammograms for his patients, he told Patient B to have Dr. Y, her family doctor, arrange this. He did not indicate in his note to Dr. Y that he felt Patient B should have a mammogram. Dr. Feigel ultimately acknowledged that he had no specific memory of a conversation with Patient B regarding mammograms.

Dr. Feigel testified about what he would have done, as he had no recollection of Patient B. He stated that on the way to the examination room, he always asks a patient if she would like to have her breasts examined. He would have asked Patient B and she would have agreed to a breast examination. He would have put her chart in the basket on the wall, handed her a paper sheet and told her to take everything off, sit on the examination table and cover her breasts with the paper drape. He would have then left examination

room 2 and gone to examination room 1 to see another patient. He would have returned to examination room 2, knocked and asked if the patient was ready. Dr. Feigel testified that he does not remember performing an examination on Patient B.

Dr. Feigel described his usual examination of a patient. The patient would be sitting initially and he would do a head and neck examination for lymph nodes, check the axillae for lymph nodes, do a blood pressure and then ask the patient to lie down. He would then listen to the heart by exposing the sternum.

Dr. Feigel documented an examination for Patient B. The note includes documentation of a normal head and neck exam, a blood pressure of 120/80, normal heart sounds and that the patient consented to a breast examination, which was normal. Dr. Feigel testified that he would have performed a breast examination in his usual manner (described below) on Patient B, informed her that the results were normal and told her to schedule a mammogram.

Dr. Feigel testified that when he does a breast examination, he looks at one breast at a time. He said it is not necessary to look at both breasts at the same time to inspect for any differences or for comparison sake. He testified he would never look at both breasts at the same time. He testified that he would examine one breast with the other one covered, then, he would cover that breast and examine the other breast.

Dr. Feigel testified that he does squeeze the nipples, as part of his breast examination, once or twice, to look for a discharge - bloody suggestive of breast cancer, pus suggestive of infection or clear suggestive of galactorrhea.

Dr. Feigel stated that had Patient B told him to “fuck off” he would be “running.” He would not expect a patient to say that to him.

After her breast examination, Dr. Feigel testified that he would have examined Patient B’s abdomen. Dr. Feigel said that to examine an abdomen with the patient lying on her

back on the examination table and covered with the paper sheet, he lifts the lower portion of the paper sheet from the bottom upwards to examine the abdomen leaving the breasts covered and the pubis exposed. This would take 15 to 20 seconds.

Dr. Feigel denied commenting on her navel ring or saying this was “sexy.” He testified that navel rings are commonly seen and not a surprising finding. This is a private thing and he would not comment on this.

Dr. Feigel testified that he would have left the room the first time Patient B told him to “fuck off” and would not have been present for her to say this to him a second time.

Dr. Feigel described his routine practice in performing a speculum exam. He never uses stirrups but has patients in a “frog leg position.” He puts gloves on, removes a speculum from the drawer on the examination table, warms the speculum with water from the sink and with his left fingers and thumbs, opens the vulva and turns the speculum to insert it into the vagina. He testified he used a small speculum to make it comfortable for her as she had not had a baby. He inspects for vaginal discharge, warts, etc. The examination takes at most 15 to 30 seconds. While he was examining her, he would have been communicating his findings to her. Dr. Feigel testified he always examines a patient while standing. He has never had a stool for sitting in his office and does not do speculum examinations from the foot of the examination table.

Dr. Feigel testified that in order to visualize structures on vaginal examination, he stands further down the table, past the patient’s knee, and bends forward. He said he would stand further up the table again, at the level of the patient’s knees, in order to do a bimanual exam.

Dr. Feigel’s clinic note for the visit states, “cervix normal, no polyps.” Dr. Feigel testified he would have removed the speculum when he was finished the examination, discarded it under the sink and proceeded to do a bimanual examination.

To conduct a bimanual examination, Dr. Feigel testified he puts lubrication on two fingers, always explains to the patient that he is going to do this examination, feels for any lesions not seen on visual examination and then examines the uterus. He does the latter by pushing his fingers up behind the cervix, pushing the uterus forward, and feeling the uterus between his hands. He would do this exam while standing at the front of the examination table standing at the level of the patient's knees. When the examination was finished, he would take off his gloves and wash his hands. The bimanual examination takes him 15 to 20 seconds to complete. He said it may have taken longer because of the reason for Patient B's referral.

Dr. Feigel testified that Patient B had a normal uterus as he had read the chart. She had dyspareunia or painful intercourse but he testified that she had no discomfort with the exam.

Dr. Feigel testified he would have told her she required a repeat ultrasound in six weeks. He would only proceed to an endometrial biopsy if the uterus lining appeared to be getting thicker, because this is a painful procedure. His impression was Patient B had post-menopausal bleeding not yet diagnosed.

Dr. Feigel said he would have then left the room and would have gone to the counter to complete the ultrasound requisition. He has no recollection of whether or not Patient B came to the counter while he was still there.

Dr. Feigel testified that the day of Patient B's visit, his Dragon voice recognition software was not working and he had to dictate his note to his receptionist. He said Patient B was the second to last patient of the day and he dictated the note right away.

Dr. Feigel denied telling Patient B that she was beautiful, gorgeous or that she had lovely breasts. He said he would never make comments such as these to a patient.

Dr. Feigel repeated that he would have left the room the first time she told him to “fuck off” and not waited for her to say this to him a third time. He denied tapping Patient B on the buttocks.

Dr. Feigel denied complimenting Patient B in any way. He testified he did not tell her she was beautiful; he did not tell her she had nice breasts; he never comments on a patient’s breasts. With respect to her navel ring, he testified he may have noticed this but that these are common and he would not have commented on it. He denied telling her she had a nice vagina, commenting on the smell of her vagina or the amount of lubrication she had.

In cross-examination, Dr. Feigel confirmed that both Patient A and Patient B were either menopausal or peri-menopausal in 2014. He agreed that when women are in that state, they may experience hot flashes, dry vagina, sleep disturbances, and most gain weight. Dr. Feigel confirmed that the weight gain is typically around the waist and hips and he said he called this type of weight gain “Canadian Tire.” Dr. Feigel agreed that for many women the weight gain affects their self-image. Dr. Feigel outlined the negative health consequences that menopause has for women as well.

Dr. Feigel testified that Ms. Turner has worked for him for twenty years. He is aware she has no other source of income. He has no relationship with her outside of the office. Dr. Feigel testified in detail about Ms Turner’s duties in the office. Ms. Turner greets patients, maintains the charts, sets up appointments and cleans and prepares the rooms for the patients, does the billing, orders supplies, as well as other duties. Another staff person does the filing.

Dr. Feigel stated that the “walls are thin” in his office. He said he can hear Ms. Turner talking when he is in his consultation room. He cannot specifically hear what she is saying. He is too busy to listen, does not pay attention and often has a stethoscope in his ears. He can hear muffled talking. He said he would be able to hear what was being said if someone was yelling but if a voice was not raised he would not likely be able to hear what was being said in another room, in the waiting room or in the corridor.

Dr. Feigel said if a patient cried out in pain while having a painful procedure, Ms. Turner would “always” come running in. She sometimes is present in the room for procedures if the patient wishes her to be there.

Cathy Turner

Ms. Turner has worked as a medical administrator for Dr. Feigel for 20 years. She trained as a medical secretary and graduated from Algonquin College in 1977.

In cross-examination, Ms. Turner acknowledged she has a good relationship with Dr. Feigel, that she is loyal to him and has no other source of income. Although she testified that she does not know all of the details of the allegations made against Dr. Feigel by Patient A and B, she does not believe them. She testified that she thinks they are unfair and ridiculous and her purpose at the hearing is to assist Dr. Feigel.

In terms of her experience working for Dr. Feigel, she described him as kind, courteous, very professional and extremely intelligent individual. She stated he is kind to patients, takes time with his patients and is very thorough.

With respect to office hours, in early 2014, she stated Dr. Feigel was working in the office three days per week. On Mondays and Thursdays, the office was open from 8:45 a.m. to 3:30 p.m. and on Tuesdays from 8:45 a.m. to 11:45 a.m. Dr. Feigel was seeing approximately 45 to 50 patients on full days and 26 to 50 patients on half days.

Ms. Turner acknowledged Dr. Feigel’s office is a busy place. He sees approximately nine to ten patients per hour. He sees a patient in one examination room while another patient is getting ready for examination in another. Ms. Turner is the only person in the office during the day. They do have another person who helps with scanning and filing and this has been the case for the last eight to ten years.

Ms. Turner testified about the lay-outs of the examination rooms and the fact that there is no stool for sitting in either room. She testified that Dr. Feigel stands to do his examinations. On occasion, she has been in the room while he has done examinations.

Ms Turner testified she has seen Dr. Feigel do examinations by standing three quarters of the way down the bed standing roughly in front of the drawer to the right of the exam table. She has never seen him do an examination at the foot of the table, standing in the space between the end of the table and the wall.

New patients would initially be seen in Dr. Feigel's consultation room and when an examination was required, Dr. Feigel would take the patient himself to an examination room. A drape sheet would be given, he would open it to show the patient how large the drape is, ask them to change and he would leave and close the door behind him.

Upon leaving the examination room, Dr. Feigel would go to the work station and complete any requisitions for tests required. He would put the patient's chart back in the door to indicate there was a patient in the room. If the patient had not yet been examined, he would go to the work station and complete any unfinished work and then see another patient.

When Dr. Feigel was finished seeing the patient, he would again go to the work station and complete the remainder of the chart. Ms. Turner would complete the labeling, etc., of the requisitions when Dr. Feigel was finished his portion.

Evidence of Cathy Turner regarding Patient A

Ms. Turner testified she knows Patient A as Patient A worked for Dr. Y. She had also been a patient of Dr. Feigel's for about 18 to 20 years.

Ms. Turner said she interacted with Patient A as a colleague periodically. On one occasion, Patient A had asked if Ms. Turner knew of any job openings anywhere in the city. Ms. Turner could not recall the exact date of this interaction but said it was before the allegations against Dr. Feigel were made and before Patient A's last appointment with Dr. Feigel. Ms. Turner testified that she told Dr. Feigel about this conversation with Patient A after Patient A made the allegations against Dr. Feigel.

Ms. Turner remembers speaking to Patient A at her appointment in January 2014. She asked if she was still looking for a job, if she was getting along better with her work colleagues and they spoke for two to three minutes and Patient A left the office.

Evidence of Cathy Turner regarding Patient B

Ms. Turner stated that she remembers Patient B. She was working on the day of her visit in February 2014. The day sheet shows Patient B's appointment time was in the afternoon.

Ms. Turner remembers checking Patient B in on the day of her visit. She recalls swiping her health card and discovering they had two patients with the same name. When she advised Patient B of this, she said "Go figure", put her hand on her hip, turned to the waiting room and then looked back at Ms. Turner. Ms. Turner finished the paper work and put it on the work station.

Ms. Turner says she remembers the encounter three and a half years later because the day following Patient B's visit, Dr. Feigel called her and told her he had been suspended because of a patient encounter the day before. In addition, she found the interaction with Patient B "odd." She felt "alarmed", "nervous" and "uncomfortable" with her saying "Go figure." She stated no one had ever said this to her before and she found it "very odd." When the police interviewed Ms. Turner, they asked her to recount what had happened when Patient B came into the office in February 2014 for her visit. In the police report, Ms. Turner described Patient B arriving at the office, going to Ms. Turner's reception

area, presenting her health card when asked for it and Ms. Turner discovering there was another patient with the same name. She reported that when she told Patient B this, she said “Go figure”, turned to look at the other patients in the waiting room and then back at Ms. Turner. Ms. Turner finished collecting Patient B’s demographics, asked her to take a seat in the waiting room, which she did and Ms. Turner finished entering her data. That was all she reported to the police.

Ms. Turner acknowledged she did not tell the police she had been concerned or alarmed by any aspect of the interaction with Patient B.

Ms. Turner wrote a letter to Dr. Feigel’s counsel on April 25, 2014. In that letter, she made no mention of being alarmed or concerned about the interaction with Patient B. She says she knew that her letter to Dr. Feigel’s counsel would be part of Dr. Feigel’s response to the College.

In cross-examination, Ms. Turner stated that first time she told anyone she was alarmed by Patient B was when she met with Dr. Feigel’s counsel, on August 31, 2017, to prepare for her testimony. She stated that her failure to raise this previously to anyone was an omission on her part. She denied she was now making this statement to assist Dr. Feigel in portraying the interaction with Patient B as something weird.

In her evidence in chief, Ms. Turner also testified that she had taken Patient B into Dr. Feigel’s consultation room early because she felt nervous about her. She had not mentioned this in her statement to the police. She had told the police Patient B had been “fine” and that “she was quiet.” She acknowledged that at the time of making her statement to the police, she would have known she should tell the police if she had felt uncomfortable with the interaction with Patient B. She understood the police were asking her about Patient B’s demeanor at the time, about anything strange occurring and yet she did not advise them of any concern she had.

Ms. Turner recalled that, after checking in, Patient B sat down in the waiting room and Ms. Turner started paperwork for another patient. She says she took Patient B into the consultation room earlier than her scheduled appointment because she was feeling uncomfortable with their interaction. Ms. Turner thinks Patient B waited less than ten minutes in the waiting room.

Ms. Turner also acknowledged that she had not told Dr. Feigel's counsel at the August 31, 2017 meeting about taking Patient B into Dr. Feigel's office early because she felt nervous. The first time she raised this was today in her evidence in chief.

Ms. Turner said that at the end of the day, Dr. Feigel did his consultation letter. The speech recognition system, Dragon, was not working on that day and Ms. Turner typed the consultation letter to the referring physician that day and Dr. Feigel signed it. He had no other consult letters to dictate that day.

Ms. Turner recalled Patient B being in examination room number 2. She heard no noises or unusual sounds coming from that room during the visit. She heard no raised voices and did not hear anyone saying "fuck off". She stated that if she had heard something like this she would have gone into the room.

In cross-examination, Ms. Turner said she would have been able to hear if someone was yelling in examination room 2, if she was sitting at her desk. She knew this because occasionally patients have yelled out in pain during a procedure. She can hear laughter and "murmurs" or "chattering" but cannot discern what is being said in those rooms. The same would be true when she is in examination room 1 and Dr. Feigel is in examination room 2 with a patient.

In her statement to the police, Ms. Turner told the police she had only been in an examination room with Dr. Feigel and a patient on one occasion. She said this was incorrect. She had been working for Dr. Feigel for 18 years, at the time of her statement, and had been in an examination room with him approximately 10 to 15 times. Her

testimony regarding where Dr. Feigel stands relative to the examination table to examine a patient was based on these 10 to 15 times. She acknowledged she is assuming he does his examinations the same way all of the time based on her relatively few observations.

Ms. Turner admitted that in 21 years of working for Dr. Feigel, she never barged into a room Dr. Feigel was in with a patient because of something she had heard. In her evidence in chief, she said she would do so if she had a concern. In fact, she had not actually ever done so. This was something she thought she would do if the situation arose.

DECISION AND REASONS FOR DECISION

The Committee considered all of the evidence before it and finds that the College has established, on a balance of probabilities, that Dr. Feigel engaged in the sexual abuse of both Patient A and Patient B and that he 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 with respect to both Patient A and Patient B.

The Law and Legal Principles

Standard of proof

According to the Supreme Court of Canada in *F.H. v McDougall*, 2008 SCC 53, the requisite civil standard of proof is on the balance of probabilities. The College must establish that it is more likely than not that the alleged conduct occurred.

The Committee recognizes that it is the College's burden to prove the allegations. There is no obligation on Dr. Feigel to disprove them.

As in all civil matters, regardless of the nature of the allegations, the evidence must be clear, cogent and convincing in order to satisfy the balance of probabilities test.

The allegations in this case are of sexual abuse and disgraceful, dishonourable or unprofessional conduct with respect to two patients Patient A and Patient B.

Sexual Abuse

“Sexual abuse” of a patient by a member of the College is defined in the Code, subsection 1(3) of the *Health Professions Procedural Code*, Schedule 2 to the RHPA, as:

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

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

The principles articulated by the Supreme Court of Canada in *R. v Chase* [1987] may be considered by the Committee in determining whether touching, behaviour or remarks are of a “sexual nature.” The objective test to be applied is as follows: “Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer”.

The test is an objective one. The subjective perception of the complainant alone should not be determinative. Just because someone sincerely believes they were sexually abused does not necessarily mean that sexual abuse has taken place. The Committee must consider the case objectively and consider all of the surrounding circumstances.

The case law establishes that the Committee may consider the body part touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act and all other circumstances surrounding the conduct. In this case, the College has not alleged any inappropriate touching. However, when dealing with remarks and gestures, the Committee finds it helpful to look at the circumstances, such as the part of the body remarked upon (where applicable), the nature of the remarks, the situation in which it occurred and any gestures accompanying the remarks.

Whether the alleged perpetrator derived sexual gratification or had a sexual purpose is a relevant factor, but the absence of sexual motivation would not necessarily preclude a finding that the behaviour in question was of a sexual nature.

Disgraceful, Dishonourable or Unprofessional Conduct

The elements of disgraceful, dishonourable or unprofessional conduct are different from the elements of sexual abuse. There can be a finding of misconduct on both grounds arising from the same set of facts if the different elements of each allegation are proven. However, the Committee may find that a physician's behaviour or remarks amount to disgraceful, dishonourable or unprofessional conduct, although it is not satisfied that the behaviour or remarks are of a sexual nature.

Credibility and Reliability

Credibility refers to the honesty of the witness. Does he or she believe their evidence to be the truth? Reliability relates to accuracy. Is the witness able to recall and recount events as they actually occurred?

The Committee considered the following factors or questions in assessing credibility and reliability (*CPSO v. Beshara* 2017):

- Did the witness seem honest?
- Did the witness have an interest in the outcome?

- Did the witness seem to make accurate and complete observations? What were the circumstances of the observations? Were they unusual or routine?
- Did the witness seem to have good memory?
- Did any difficulty that a witness had seem genuine or made up?
- Did the witness seem to be reporting or simply putting together an account put together from other sources?
- Was the testimony reasonable or consistent?
- Did they say something different on an earlier occasion?
- Did any inconsistencies make the evidence more or less reliable and believable? Was it an honest mistake? Is there an explanation for the inconsistency?
- What was the witness's manner? Remember that looks can be deceiving.

The Committee is aware that there is no legal requirement that a complainant's testimony be corroborated and, in any case, in the situation where there is an allegation of sexual abuse, it would be rare to have corroborating evidence as such acts typically occur in the absence of others.

The Committee is aware that there is no rule governing when inconsistencies in a witness's testimony will render the evidence not credible or reliable. Memory is imperfect and inconsistencies on minor matters or matters of detail are normal, to be expected and must be considered when weighing all of the evidence.

All of the evidence presented to the Committee must be considered and weighed as it pertains to the core issues in the case. The Committee may determine that part, all or none of a witness's evidence is credible and/or reliable.

FINDINGS

The Committee reviews the credibility and reliability of Ms X, Cathy Turner and broadly, Dr. Feigel. It then makes findings on the issues including regarding the credibility and

reliability of Patient A and Patient B. Following its findings, the Committee considers the issue of Similar Act Evidence and then summarizes its conclusions.

Credibility and Reliability of Ms X

Ms X gave her evidence in a straightforward manner. She acknowledged that her memory was imperfect. She readily acknowledged when she did not remember something. She had no obvious interest in the outcome of this case.

The Committee considered that when Ms X was interviewed by Mr. Lobsinger, she recalled that Patient A told her that Dr. Feigel had patted her on the bottom. In fact, Patient A did not allege that Dr. Feigel patted her on the bottom. The Committee notes that Ms X was not interviewed until six months after the conversation with Patient A and concludes that Ms X simply made a mistake about this issue. The Committee did not consider this error to have any significant impact on Ms X's credibility.

The Committee also considered the submission by counsel for Dr. Feigel that Ms X's recollection of her discussion with Patient B was faulty because Ms X remembered Patient B saying that Dr. Feigel had told her that she was sexy looking and that her navel ring was sexy, whereas Patient B's evidence was that Dr. Feigel told her that her navel ring was sexy and that she was beautiful and gorgeous. The Committee notes that Patient B's evidence was that Dr. Feigel said "God that's sexy" and then made a second comment to indicate that he was saying that her navel ring was sexy. The Committee concludes that Ms X misunderstood Patient B as having said that one of those comments related to Patient B's being sexy (without reference to the navel ring). The Committee concludes that this does not detract from her credibility or reliability.

The Committee finds Ms X to be credible and her evidence reliable.

Whether Ms. X tainted the evidence of Patient A and Patient B?

Dr. Feigel's counsel suggested that Ms X had been a conduit of information between Patient A and Patient B and that in passing information between them, she had tainted their perceptions. Dr. Feigel's counsel submitted that this was a group effort to bring consequences to Dr. Feigel.

Patient A testified that she had returned to Dr. Y's office to work after her visits with Dr. Feigel and had mentioned to Ms X that she felt uncomfortable about things Dr. Feigel said and did. After the January 2014 visit, she told her co-workers, and possibly Dr. Y, what had happened. She initially said she had not spoken to Ms X again about Dr. Feigel but she corrected this on cross-examination and said she had spoken to Ms X again about Dr. Feigel when she was told by Dr. Y about Patient B. Dr. Y told her another patient had complained about Dr. Feigel. Her recollection was that Dr. Y had told her about inappropriate touching of the patient's breasts and not about inappropriate comments made.

Both Patient A and Patient B testified that they did not know who the other individual making a complaint against Dr. Feigel was nor had they ever spoken.

Ms X and Patient B both testified that the conversation they had regarding Patient B's visit with Dr. Feigel in February 2014, was very brief lasting only a few minutes and that few details were discussed. Ms X testified she does not recall telling Patient B about Patient A's experience and that she does not think she would have told Patient B about Patient A because that was personal information. The Committee accepts her evidence in this regard. Ms X works in a medical office and it can be reasonably assumed, given her position, she understands patient confidentiality.

Patient B said on cross-examination that it was possible that Ms X had told her Dr. Feigel was a "bad guy" but she did not remember this being the case.

Patient B testified that she knew of no patient complaints prior to her visit with Dr. Feigel. She was told by Paul Lobsinger that there was another complainant against Dr. Feigel after she had made her complaint. She did not know who this individual was or the specifics of the complaint. She had no other source of information regarding any other patients making complaints about Dr. Feigel.

Patient B told Ms X what had happened at the visit with Dr. Feigel when she called Dr. Y's office immediately after her visit with Dr. Feigel. Further, given that Patient B would have told Ms X what happened in her appointment at the beginning of that conversation, even if Ms X had told Patient B anything about Patient A, this would have been only after Patient B had relayed her story to Ms X. At most, Patient B and Ms X conceded that it was possible that Ms X might have told Patient B that Dr. Feigel was a "bad guy" or that another patient had complained about him, but in fact neither Patient B nor Ms X had any memory of this. Patient B's evidence is that she does not recall Ms X telling her about Patient A.

Patient B gave her statement to the police seven days after the February 2014 visit. She was not told about another complainant by Paul Lobsinger until after she had made her statement to the police and to the College.

The Committee looked carefully at the evidence given by Patient A, Patient B and Ms X with respect to the interactions among them and does not find on the evidence that there was any collusion between them. For the reasons stated, the Committee rejects the suggestion that Ms X acted as a conduit between Patient A and Patient B and that she passed details of what each patient had told her back and forth between them tainting their perceptions and subsequent evidence. Further, the Committee rejects the theory that it was a group effort between Ms X, Patient A and Patient B to bring consequences to Dr. Feigel.

Credibility of Cathy Turner

Ms. Turner testified that Dr. Feigel always stands to do his examinations, as opposed to sitting on a stool, and she was specific about where he stands along the front of the exam table to do these examinations. On cross-examination, she admitted that she has only been in an examination room with him, when he is performing an examination, on 10 to 15 occasions in 21 years.

Ms. Turner testified in her evidence in chief that she heard nothing untoward the day of Patient B's visit. She stated that she would run into the room if she heard a patient yelling or screaming. On cross-examination, she acknowledged that she had never, in 21 years, gone into an examination room for this reason. This was merely something she thought she would do. She also testified that while she could hear muffled conversations when Dr. Feigel was in a room with a patient, she could not hear specifically what was being said. She was moving about the office fairly frequently and in fact could hear very little if she was in the back of the office.

Ms. Turner testified that she was "alarmed" by Patient B's "Go figure" comment and that this had made her nervous and uncomfortable. The rationale for her feeling this way was that no one had ever said to her before. The first time Ms. Turner expressed feeling "alarmed" was in her evidence in chief at this hearing. Ms. Turner had not expressed feeling "alarmed" to the police at the time of her statement on March 20, 2014 and in fact acknowledged on cross-examination that she had told the police Patient B was "fine" and "she was quiet." She had not expressed feeling "alarmed" by Patient B in her letter to the College on April of 2014 or to Dr. Feigel's counsel. Ms. Turner also testified that she had taken Patient B into Dr. Feigel's consultation room early because she felt uncomfortable with Patient B. Patient B testified that after she registered with Ms. Turner a few patients were taken in to see Dr. Feigel before she was. Patient B recalled being taken in on time.

Ms. Turner gave a detailed account of Patient B's registration at her desk, the "Go figure" comment, taking her into the consultation room early because she was feeling nervous about Patient B but does not recall many details of the remainder of the visit.

Ms. Turner acknowledged that she was aware of the importance of providing the police with all pertinent information at the time she made her statement to them. She agreed she understood the police would have been interested in the demeanor of Patient B or hearing about anything that might help to shed light on what happened at the February 2014 visit. She also agreed she understood it would have been important for the College to have any information regarding her impressions of Patient B or anything untoward that would have happened at the time of that visit. She understood that this would have been equally important to Dr. Feigel's counsel to have any and all information she might have regarding the visit. Despite this, she did not express any concern to the police, the College or Dr. Feigel's counsel regarding the behaviour of Patient B and in fact did not raise this at all until her testimony was given at this hearing.

The Committee could not understand, based on the evidence provided by Ms. Turner, why she would be alarmed by this comment made by Patient B or why this would make Ms. Turner feel nervous or uncomfortable. The Committee concluded that Ms. Turner did not report feeling alarmed to anyone because she in fact did not feel alarmed by Patient B at the time of the visit. Ms. Turner later put this account together to suggest that Patient B's behavior had been odd or unusual in some way and to discredit Patient B's evidence. It is the Committee's opinion that Ms. Turner tended to answer in a manner that would support Dr. Feigel's case. She did not avoid answering questions but it seemed, at times, that there was a rehearsed quality to her testimony.

The Committee is sensitive to the fact that her employment with Dr. Feigel is Ms. Turner's sole source of income. Ms. Turner spoke highly of Dr. Feigel and she acknowledged her loyalty to him and that she felt that the complaints against him were unfair and ridiculous. She acknowledged she was there to support Dr. Feigel.

Ms. Turner did acknowledge in cross-examination that that she had had the discussion with Patient A about her work stress and that she told Dr. Feigel about it after Patient A had made allegations against him.

The Committee accepts Ms. Turner's evidence in some respects: her evidence as to Dr. Feigel's standard practice of knocking on a door before entering, what can be heard in the office, that there was no stool in the examination room, that she has never run into an examination room upon hearing cries of pain and that she told Dr. Feigel about Patient A's office stress and when. However, as noted above, the Committee does not find Ms. Turner to be credible when describing her interactions with Patient B.

Credibility of Dr. Feigel

The Committee finds that Dr. Feigel was not credible and that his evidence was not reliable overall, although it did accept his evidence on certain points.

Dr. Feigel was evasive in answering questions, inconsistent in his testimony and he was dishonest at times. He testified at length at times on a point and then acknowledged he did not remember anything about the point he was testifying on. It is the Committee's opinion that Dr. Feigel filled in the gaps and added details he really had no memory of in order to put together an account to explain his behavior.

Complimenting Patients

Dr. Feigel did not answer questions in a straightforward manner regarding whether or not he compliments patients. Initially, he said he does not compliment patients. He then acknowledged he would occasionally tell a patient who had been pregnant that she had a "nice tummy" when she had lost weight following her delivery. He rationalized that "tummy" is a medical term and that making comments such as these to patients is not important. He ultimately acknowledged, upon reviewing the statement he made to police, that he does make such comments as "you look nice," "you look wonderful," "you look

fit,” “you have lost weight,” “nice tummy” to his obstetrical patients but only “rarely.” Sometimes, he comments on patients’ tummies after a Caesarian section. His rationale for making such comments was that patients feel uncomfortable with their bodies after being pregnant and having a baby and his compliments make them feel better about themselves.

While he acknowledged that postmenopausal or peri-menopausal women also have similar issues with body image, he denied ever making such comments to these patients.

The Committee finds that despite testifying he is aware of the need for professional boundaries, Dr. Feigel has complimented patients on their physical appearance.

Attitude towards Patients

The College asserts that Dr. Feigel’s use of terms such as “Canadian tire” to refer to truncal weight gain in patients during menopause and his reference to Patient B as a “crazy chickie” when he made his statement to the police is a reflection of his attitude towards and his lack of respect for his patients.

Dr. Feigel’s counsel rationalized his use of the term “crazy chickie” to the police as a reflection of his stress and upset following the incident with Patient B.

The Committee is sensitive to the fact that for a physician, having a complaint of sexual abuse made against him and having to make a statement to the police would be a very stressful experience. The Committee would never, however, condone the use of such terms as “crazy chickie” to describe a patient and would perceive this as inappropriate and unprofessional. The Committee finds that using such terms to describe a patient demonstrates a lack of respect, as does Canadian Tire to describe truncal weight gain.

Dr. Feigel and Patient B both testified that a paper drape was used for the examination. No gown was used. In order to do an examination of the abdomen, either the paper sheet needs to be pulled down exposing the breasts (as Patient B testified) or the paper sheet is

pulled up, exposing the genital area (as Dr. Feigel testified). Either the breasts or the genitals are exposed to examine the abdomen. In either event, the way Dr. Feigel draped his patients for examinations indicates he is insensitive to their modesty and privacy.

Evasive and Contradictory in Response to Questions

The College asserts that Dr. Feigel was evasive and contradictory in providing answers to questions and that his answers were at times self-serving. The Committee notes that Dr. Feigel appeared at times to be resistant to answering a straightforward question asked of him. He had to be asked a question several times in order to get an answer. He frequently went off on a tangent to make a point instead of answering the question asked or answered in a manner that appeared to be an attempt to undermine the evidence of one of the complainants rather than simply answer the question.

Dr. Feigel was asked, for example, about the possibility that Patient B was standing covered with the paper sheet when he left the room. He responded that this was “impossible.” He seemed to be indicating it was not possible for Patient B to have seen him open the door to examination room 1 when that was not the question that was asked.

As noted above, Dr. Feigel refused to acknowledge that making a positive comment about a patient’s appearance was a compliment.

With respect to Patient B, Dr. Feigel initially said he had told her to have Dr. Y arrange a mammogram for her because of her increased risk of breast cancer. There was no notation in his consult to Dr. Y to suggest that Patient B have a mammogram. Dr. Feigel ultimately admitted he had no memory of a discussion regarding a mammogram whatsoever.

Dr. Feigel gave evidence that he did not recall Patient B and yet he gave details about her visit that were not documented in his note. He said, for example, that he had used a small speculum for her speculum exam because she had not had a pregnancy. He also said she

had no discomfort when he did the pelvic exam, even though it was not charted and he could not recall Patient B.

Dr. Feigel told the police he did not remember Patient A and yet said they had a special relationship because they are both from the same country. He said he felt compelled to tell her “Happy New Year” because of this and yet later acknowledged he did not remember this.

Dr. Feigel testified initially that Patient A had told him about her stress related to working in Dr. Y’s office. Patient A denied a discussion with him about office stress. Dr. Feigel later acknowledged that it was Ms. Turner who told him about this. Ms. Turner testified in cross-examination that the discussion she had with Patient A regarding looking for another job had occurred before Patient A’s last visit and the allegations made against Dr. Feigel and that she told Dr. Feigel about this conversation with Patient A after Patient A made the allegations against Dr. Feigel. This indicates that Dr. Feigel added the note about work stress to Patient A’s chart after Patient A’s last appointment and based on what Ms Turner had said, not Patient A. The chart notation regarding this is at the end of the note of the appointment and below Dr. Feigel’s initials, which indicates this notation was a late addition to the chart. These findings undermine Dr. Feigel’s credibility.

Dr. Feigel also testified that he was 100% certain that Patient A had not told him that her family member died of bowel cancer, as she testified she brought up many times with him over the years. The Committee finds that Patient A has knowledge of what her family member died of. Dr. Feigel insisted that Patient A’s family member died of ovarian cancer as the original referring doctor included that erroneous detail in his referral letter. He could not acknowledge that he may have made an error or failed to correct Patient A’s chart to reflect colon and not ovarian cancer and went as far as saying she must have given him the wrong information about her own family member. Dr. Feigel’s willingness to be so adamant on this point in light of evidence to the contrary detracts from the reliability of his evidence.

Other aspects of Dr. Feigel's credibility and the reliability of his testimony are reviewed in relation to the allegations specific to Patient A and Patient B.

Issue 1a): Did Dr. Feigel engage in the sexual abuse of Patient A during an appointment in January 2014, by making comments of a sexual nature to Patient A, or touching, rubbing or gesturing towards his groin area while making comments of a sexual nature to her; or by making comments of a sexual nature to Patient A during other medical appointments?

Findings including Credibility and Reliability of Patient A and Dr. Feigel

There was no physical examination on Patient A's January 2014 appointment with Dr. Feigel. Patient A stated that at the end of the appointment when she was ready to leave the office, they stood together and talked in the consultation room. The consultation room door was still closed. Dr. Feigel wished her "Happy New Year" while holding one of her hands. She testified that she was "pretty sure" that he told her she was sexy three times during this time. Dr. Feigel was holding one of her hands and asked her if she was "entertaining" herself while making an "up and down gesture" on his own body close to his hips. She believed that this question, in combination with his hand gesture, was meant to ask if she was engaging in masturbation.

Patient A gave a straightforward and honest account of what happened at her visits with Dr. Feigel.

Patient A had been Dr. Feigel's patient for over 20 years. She was reluctant to make a complaint against Dr. Feigel. She testified she was encouraged by Dr. Y to make a complaint. In fact, Patient A did not wish to testify but once summonsed, felt it was her duty to do so and, in part, hoped Dr. Feigel would not make inappropriate comments to other women. However, Patient A testified she did not feel he deserved legal or criminal charges against him.

Patient A described Dr. Feigel as a good physician and a good gynecologist and continued to see him after he had made comments to her that made her feel uncomfortable in the two to three years preceding the January 2014 appointment. She testified that she rationalized these comments as Dr. Feigel having a strange sense of humour, until she says “he crossed the line” on the last visit when he asked her if she was “entertaining herself” and made gestures to indicate masturbation. Essentially, Patient A tolerated the comments made by Dr. Feigel until the visit of January 2014, after which she did not return to see him because she felt his behaviour was no longer tolerable.

The Committee finds Patient A’s evidence that Dr. Feigel told her at a few visits prior to the January 2014 appointment that she had a “nice tummy” or “nice belly,” and about “being sexy” to be credible. Dr. Feigel testified he uses the word “tummy” when complimenting pregnant patients. Patient A used the same word “tummy” in her testimony to indicate what he said to her; she did not say abdomen or stomach. The Committee rejects Dr. Feigel’s evidence that he only rarely complimented his obstetrical patients and finds that he compliments his patients on their physical appearance.

Patient A testified that she did not discuss stress at work with Dr. Feigel. This accords with Ms. Turner’s and Dr. Feigel’s testimony that he had heard this from Ms. Turner, and not from Patient A, although it is noted in Dr. Feigel’s office note for Patient A’s January 2014 visit. As indicated earlier in these reasons, the Committee found that Ms. Turner told Dr. Feigel about her conversation with Patient A about work stress after the allegations were made against Dr. Feigel and that the notation about it in the note of the appointment below Dr. Feigel’s initials was added later.

In her evidence, Patient A did not exaggerate or fill in the blanks when she could not remember something. Patient A readily acknowledged that she was incorrect regarding not having spoken to Ms X about Dr. Feigel other than just after her January 2014 visit. Ms X testified that Patient A had returned to Dr. Y’s office after visits with Dr. Feigel and mentioned that Dr. Feigel had said or done something that made her uncomfortable, but she did not remember the details. Patient A also acknowledged that she had made an

error and that she had spoken to Ms X about Dr. Feigel, approximately one month after January 2014, after Patient B had called Dr. Y's office to complain about what had happened to her.

Counsel for Dr. Feigel submitted that Patient A testified she told Ms X what had happened at the appointment and that if Patient A had in fact told Ms X that Dr. Feigel has asked if she "entertains herself" and made the corresponding hand gesture, Ms X would have remembered this. Counsel for Dr. Feigel suggested that because Ms X did not recall this, Patient A did not tell Ms X about it. Further, he submitted that if Patient A did not tell Ms X about it, it did not happen. Instead, counsel for Dr. Feigel suggested that Patient A was thinking of some discussion of masturbation in the past, perhaps in 1999.

The Committee does not accept this submission. Patient A did not testify to exactly what she told her colleagues when she returned to the office after the January 2014 appointment with Dr. Feigel. There was no evidence from Patient A that she told them specifically about the "entertaining herself" comment or the gesture. It does not follow that if Patient A did not tell Ms X about this, it did not happen. Also, these events occurred in 2014, several years ago, and Ms X was not asked about that conversation until approximately six months after it occurred. The Committee does not find it difficult to believe that Ms X would not remember what it was that Patient A found disturbing about her appointment when Ms X was asked about it six months later. It is entirely conceivable that she did not remember these details or that they were not shared with her. Further, while it is true that Ms X did not volunteer this information when asked what Patient A told her, it was not specifically put to her in cross-examination (i.e., she was not asked whether Patient A had told her about the remarks and gesture referencing masturbation).

Further, the Committee does not accept that Patient A confused a conversation about masturbation that was suggested by Dr. Feigel's counsel to have occurred sometime in the past, perhaps 15 years earlier, with what happened at the January 2014 appointment. Patient A's evidence was clear it was Dr. Feigel's comment about "entertaining herself"

and accompanying hand gesture that she felt “crossed the line”, while she had tolerated Dr. Feigel’s other comments on prior appointments. Patient A’s conduct after the fact is consistent with her evidence that Dr. Feigel’s comment about masturbation – the conduct which she felt had “crossed the line” – took place in January 2014, rather than at some earlier appointment as suggested by counsel to Dr. Feigel.

Patient A testified that Dr. Feigel had not asked her about masturbation at her visits prior to January 2014. She also said he did not know any of the details of her sex life and in fact they had never discussed the fact that she is gay.

Dr. Feigel acknowledged in his testimony that the first time he became aware of her sexual orientation was when Patient A gave her evidence at the hearing. Dr. Feigel acknowledged he did not remember Patient A and that he needed to rely on his notes. He was certain, however, that he had talked to her about masturbation in the past because she had a history of recurrent vaginal infections and painful intercourse. He would have asked her about this and the use of sex toys which can contribute to infection.

Dr. Feigel acknowledged on cross-examination that he had no specific memory of asking Patient A about masturbation. He was given an opportunity to review his clinical notes in detail and acknowledged that the last reference to vaginal infection was in 1999 or 15 years prior to the last visit on January 2014. There was no reference to painful intercourse in his notes although he said he had discussed this. There was no reference to a discussion of masturbation in any of Patient A’s notes. He rationalized that while he would have discussed this with her, he would never write it in the chart. He admitted that there would have been no clinical reason to discuss masturbation with Patient A at her January 2014 visit and denied having done so.

It is the Committee’s conclusion that Dr. Feigel was trying to find a reasonable explanation for why he would have asked Patient A about masturbation related to a clinical purpose in the past, while denying he asked her about this on her last visit. He admits he has no memory of Patient A’s visits and no documentation to suggest he asked

her about masturbation at prior visits and yet he is certain he did. The Committee concludes that if Dr. Feigel had, in fact, discussed Patient A's sex life, he would have garnered the information that she was gay. The fact that he did not know this makes Dr. Feigel's testimony in this domain unreliable.

Patient A's evidence was not undermined in any way on cross-examination. There were no major inconsistencies or unexplained gaps in her evidence. Patient A had no animus towards Dr. Feigel and no apparent reason to fabricate a story about him after being his patient for about 20 years. In fact, Patient A thought he was a good gynecologist and only switched to another doctor when he "crossed the line" and asked her if she was "entertaining herself" and made the accompanying gesture. She did not wish to testify but did because she felt it was her duty to do so once summonsed.

Patient A's evidence was consistent throughout, and she was not materially impeached on any prior statements. The Committee finds her to be a credible witness and her testimony reliable and accepts her evidence with respect to her visit with Dr. Feigel in January 2014.

The Committee accepts Patient A's evidence that Dr. Feigel asked her about masturbation on the January 2014 visit in an inappropriate manner and unrelated to a clinical purpose by asking her if she was "entertaining self" and making a lewd gesture to indicate masturbation. Dr. Feigel's evidence is not credible on this point. The Committee finds Dr. Feigel has never discussed masturbation with Patient A at any appointment prior to January 2014.

The Committee finds that Dr. Feigel made the remarks to Patient A about her being sexy and entertaining herself and made the gesture indicating masturbation at the January 2014 appointment. As noted above, the test whether Dr. Feigel's conduct amounted to sexual abuse is an objective test. "Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer." The Committee considered the totality of the circumstances, including the nature of the remarks, the situation in

which they occurred and on the last appointment, the gesture accompanying the remarks. The Committee finds that an objective observer would view the comment that Patient A was sexy, and the gesture indicating masturbation and accompanying question whether she was “entertaining herself”, as sexual in nature.

Regarding the remarks at a few medical appointments in the two years preceding her last appointment in 2014, the Committee finds based on the evidence and the assessment of their respective credibility that Dr. Feigel made comments to Patient A that she was “sexy” and that she had a “nice tummy or belly.” According to the clinic notes, Patient A had physical examinations at some of those appointments, but not at other appointments, during this time period. Patient A testified that when she was on the examining table during a physical examination, Dr. Feigel told her she had a “nice tummy” or “one or two comments like that.” Patient A testified that Dr. Feigel said she was sexy “a few times” on appointments prior to the January 2014 appointment. It is not clear from her evidence whether or not the “sexy” comments were made during or in the context of a physical examination, or that the “sexy” and “nice tummy” comments were ever made during the same appointment.

The Committee finds Patient A credible and finds that Dr. Feigel made the comments alleged on one or more prior appointments. A comment that a patient is “sexy” is by definition a remark of a sexual nature, regardless of whether or not it is made during or in the context of a physical examination. Consequently, the Committee finds that Dr. Feigel engaged in sexual abuse of Patient A by making a remark of a sexual nature at appointments prior to the January 2014 appointment.

With respect to the comment “nice tummy or nice belly,” without further details regarding the circumstances in which the comment was made, the Committee does not find that it is a remark of a sexual nature. The fact that the comment was made during a physical examination is concerning, but without further details, the Committee is not prepared to conclude that an objective observer would find this to be a comment of a sexual nature. However, the Committee finds as indicated later in this decision that

commenting that Patient A had a nice tummy or belly during a physical examination, constitutes disgraceful, dishonourable or unprofessional conduct.

Issue 1b): Did Dr. Feigel engage in sexual abuse of Patient B during an appointment in February 2014, by making comments of a sexual nature to Patient B?

Findings including Credibility and Reliability of Patient B and Dr. Feigel

The Committee finds that Patient B is a credible witness and that her evidence is reliable on the issue of the remarks made to her by Dr. Feigel.

Patient B's evidence is consistent with Dr. Feigel's that during the appointment, Dr. Feigel conducted a breast examination, which included a nipple examination, an abdominal examination and a pelvic examination, which included a speculum exam and a bimanual exam. The Committee reiterates that there are no allegations regarding the appropriateness or manner of the breast, abdominal or pelvic examinations.

Patient B alleges that Dr. Feigel made inappropriate remarks prior to and during the breast examination and during the abdominal and speculum parts of the examination. Dr. Feigel denies that he made these comments. Dr. Feigel testified that he remembered Patient B because of what happened (being contacted by his chief of staff and the police), but he has no recollection of the visit at all. In respect of the examinations, he testified about what he would have done because he had no recollection of Patient B. He testified he does not remember performing the examinations.

Dr. Feigel's counsel put forth the theory that because Patient B felt there was something inappropriate about the breast examination, this coloured her perception of the appointment and that she made up the remarks she alleged were made. The Committee rejects this theory and accepts Patient B's evidence that the alleged remarks were made is credible and reliable, for the following reasons.

Arrival and Interaction in Consultation Room

Patient B gave a straightforward account of the sequence of events. She could not recall some of the details of parts of her visit. However, she did not attempt to fill in any details, but rather admitted what she could not recall. For example, Patient B said nothing unusual happened with respect to her arrival at Dr. Feigel's office. She felt this part of the appointment was quite normal. Patient B also said nothing unusual happened when she was in Dr. Feigel's consultation room with him. She acknowledged not recalling the details of the discussion in the consultation room, such as whether, or not, he took a medical history from her.

Interaction in Examination Room

After the consultation, Patient B recalled Dr. Feigel taking her to the examination room, providing her with a paper sheet and asking her to undress while he left the room. There is a minor issue whether Dr. Feigel knocked when he returned to the examination room. Patient B testified that Dr. Feigel did not knock when he returned to the examination room but came directly in. Dr. Feigel and Ms. Turner both testified that it is Dr. Feigel's standard practice to knock on an examination room door prior to entering. The Committee finds that Dr. Feigel did knock prior to opening the door. It is possible that Patient B did not hear the knock. The Committee makes no finding whether it was the case that Patient B did not hear a knock or simply forgot that it occurred, but in any event did not find that any error that Patient B may have made on this point had any impact on her credibility.

There is also a minor issue whether Dr. Feigel told Patient B to lie down on the examination table or whether she sat first for a blood pressure and other aspects of examination. Patient B testified that Dr. Feigel told her to lie down on the examination table. Dr. Feigel testified his practice is to have a patient sitting up to examine the head, neck and axillae for lymph nodes, take a blood pressure and then asks the patient to lie down. The note for Patient B's appointment records a normal head and neck exam and a

blood pressure. The Committee noted that blood pressures were recorded in Patient A's chart, which suggests that Dr. Feigel does do blood pressures. According to both Patient B and Dr. Feigel, Patient B was given a paper sheet, not a gown. The Committee considered that if sitting, Patient B would have to hold the paper sheet in place and continue to do so while Dr. Feigel used one arm to do her blood pressure. Then, she would have to try to hold the sheet in place to cover herself while she put her legs up on the table to lie down. It would be awkward to hold a paper sheet in place to preserve her modesty while doing this. The Committee believes Patient B would have remembered having to do this if it happened the way Dr. Feigel said it did. The Committee accepts Patient B's evidence that she was told to lie down and considered that Dr. Feigel did her BP when she was lying down. However, the Committee concluded that nothing turns on this issue.

Alleged Comments prior to Breast Examination

Patient B testified that when Dr. Feigel entered the examination room, she was lying on the table. He came to the table and stared at her with a "vile stare." She said his stare was "expressionless," he was "staring directly into my eyes," his "brow was furrowed," "eyes glaring," "cold" and stated that the stare went on for what seemed like a long time. While the Committee is not able to come to any conclusion about the nature of the stare, Patient B was adamant it happened. While staring at her, Patient B said Dr. Feigel told her she was "beautiful" and "gorgeous." The Committee finds that these statements were made as described by Patient B based on its assessment of their respective credibility as set out in these reasons and its finding that Dr. Feigel compliments patients regarding their physical appearance.

Alleged Comments during Breast / Nipple Examination

Regarding the breast examination, Patient B described Dr. Feigel pulling down the paper sheet to expose both breasts. Patient B testified that she perceived the initial part of the breast examination to be normal in terms of what she had experienced previously with

breast examinations. She testified that he had both hands on her breasts at the same time and told her she had “lovely breasts.” She testified that she did not perceive this comment to be normal and did not reply to it.

Dr. Feigel gave evidence that he exposes one breast at a time because he examines one breast at a time. He stated that he does a refresher course at Harvard almost every year and there is no need to examine both breasts at the same time for comparison. He stated that he uses his right hand to examine the left breast and his left hand to examine the right breast while keeping the opposite breast covered.

With respect to the nipple examination, Dr. Feigel and Patient B’s evidence was consistent that a nipple examination had been done and as to how it was done. Patient B said she had not had her nipples examined in the past as part of a breast examination. Dr. Feigel gave evidence that he examines nipples routinely because he has a concern about missing breast cancer in his patients.

Patient B testified that Dr. Feigel asked her if she had sensitive nipples and if she liked it when her husband sucked her nipples. He then “rolled” her nipples between his fingers and thumb. It was her evidence that he did not explain to her what he was doing or why during the examination. Patient B stated that Dr. Feigel made comments to her while he had both hands on her breasts including saying she had “lovely breasts” and asking the inappropriate questions. She acknowledged that she was not sure if he had made the comment about her breasts and nipples while he was physically examining her breasts or before.

Patient B testified that she asked Dr. Feigel what the breast exam had to do with endometriosis as it was her perception that a possible diagnosis of endometriosis may have been the reason Dr. Y referred her to Dr. Feigel. When he did not respond to her question about what the breast exam had to do with endometriosis, she told Dr. Feigel to “fuck off” and he stopped examining her. She described an “unfazed” look on his face.

She stated that she did not raise her voice when she told him to “fuck off” but said this in a somewhat assertive tone. She said she felt scared and angry at the time.

There is a discrepancy between Patient B’s and Dr. Feigel’s evidence regarding whether he asked her if she wanted her breasts examined. Patient B testified that Dr. Feigel did not ask her if she wanted to have her breasts examined. She testified that her family doctor regularly examined her breasts and she had recently had a mammogram. She testified that she did not understand why she was having a breast examination and during the breast examination, asked what a breast exam had to do with endometriosis. Dr. Feigel testified that he routinely asks patients if they wish to have a breast examination and that 50% of his patients consent, he would have asked Patient B in the hallway on the way to the examination room and that she consented.

The Committee accepts Patient B’s evidence that Dr. Feigel did not ask her if she wanted a breast examination. She stated that her breast exams were done routinely by her family doctor and that she had a recent mammogram. She did not understand why she was having a breast examination and asked Dr. Feigel what a breast examination had to do with endometriosis. It did not make sense to the Committee that she would have asked this question if Dr. Feigel had obtained her consent to conduct a breast exam in advance. In the typed note for Patient B’s appointment, Dr. Feigel documented that Patient B has normal breasts and that consent was obtained for the breast exam. There is no other documentation regarding the breast exam and there was no notation in his consult note to her family doctor, Dr. Y, to suggest that she have a mammogram. On that point, Dr. Feigel initially testified he had told Patient B to have Dr. Y arrange a mammogram for her because of her increased risk of breast cancer; however, Dr. Feigel ultimately admitted that he had no memory of a discussion regarding a mammogram whatsoever (see page 48 of these reasons). The Committee doubts the reliability of Dr. Feigel’s note that he obtained consent to a breast exam. The Committee finds that Dr. Feigel was not credible regarding asking Patient B if she wanted a breast exam on the way to the examination room.

The Committee also finds that Dr. Feigel was not credible with regard to examining only one breast at a time while leaving the other one covered. The Committee accepts Patient B's evidence that Dr. Feigel pulled down the sheet to expose both breasts and rejects that he took care to expose only one breast at a time while examining them. The fact that Dr. Feigel later testified that he proceeded to do an abdominal examination by pulling up the sheet, which would have exposed Patient B's genitalia, casts doubt on his testimony about exposing only one breast at a time. If he was not concerned about her modesty with exposing her genitalia while examining her abdomen, why would he be concerned with exposing only one breast while examining the other? The Committee's view is that Dr. Feigel testified about exposing only one breast at a time in order to undermine Patient B's testimony about both breasts being exposed when he told her she had "lovely breasts" and both of his hands being on them at some point. The Committee accepts Patient B's evidence on this issue as credible.

The Committee agrees that if Patient B were intent on making up evidence against Dr. Feigel, Patient B would have said that Dr. Feigel made his inappropriate remarks and asked his inappropriate questions while he was touching her breasts. The fact that Patient B fairly admitted that she did not recall whether he was touching her at the time is an example of Patient B acknowledging the limitations of her recollection, rather than making up evidence.

The Committee finds Patient B's account of how the breast exam happened plausible. Although Patient B thought that aspects of it, such as the nipple examination, were not appropriate as she had never had that done before or was not clear on why it was being performed, there is no indication that she misheard or misunderstood the remarks made to her or that she made them up.

Abdominal and Pelvic Examinations

Regarding the abdominal and pelvic examinations, Patient B testified that Dr. Feigel pulled the paper cover down further after examining her breasts to expose her abdomen.

Patient B testified that Dr. Feigel commented that her navel ring was sexy while staring at her abdomen with one hand on her abdomen and the other near her pubic area. She testified that this is when she told him to “fuck off” a second time and says he moved on to a speculum exam.

Patient B testified that while doing the speculum exam, Dr. Feigel made remarks about the smell of her vagina, her vaginal lubrication and that she had plenty of lubrication and told her the cyst she had had resolved. Following the speculum exam, he did a bimanual exam and she felt this took longer than it should have, that she wanted him to stop and told him to “fuck off” a third time and moved away so that his fingers came out of her vagina. She had told the police she thought he was in the “wrong place.” Patient B, on cross-examination, readily acknowledged that she could have been wrong about Dr. Feigel “being in the wrong place” when he did her bimanual examination and that she could have been mistaken that the bimanual examination was taking longer than normal.

Both Patient B and Dr. Feigel described the speculum exam as being done without stirrups. Patient B said Dr. Feigel did this sitting on a stool at the foot of the exam table. Dr. Feigel said he does not have a stool in his office, that the end of the table in examination room 2 is rusted and cannot be lowered and that he stands at the front of the table and bends over the patient, past their knees, to do the speculum exam. He gave evidence that there is only 11 inches from the end of the table to the wall and that there is inadequate space for him to stand at the foot of the table. Dr. Feigel testified that he does procedures such as endometrial biopsies, IUD insertions, and other procedures. Dr. Feigel gave evidence that he never stands at the foot of the table to do an examination.

The Committee accepts that Patient B was mistaken about the presence and use of a stool and where Dr. Feigel was standing when he did her speculum examination. She did draw the stool for the police at the time she gave her statement. There is no room for a stool at the end of the examination table. Both Dr. Feigel and Ms Turner testified that there was never a stool in the examination rooms. Dr. Feigel was not cross-examined on this point. The Committee’s view is that Patient B’s incorrect recollection that a stool was present is

a minor point and does not significantly impact her overall credibility or the reliability of her evidence on the key issues. Her experience of other pelvic examinations over the years when the physician sat at the end of the table may have been conflated with this particular examination. The examination happened by both accounts and whether it was from the side of the table or the end does not affect that.

What is at issue is whether Dr. Feigel made certain remarks during the abdominal and speculum examinations that did take place. Patient B testified that Dr. Feigel made remarks that her navel ring was sexy while staring at her abdomen with one hand on her abdomen and the other near her pubic area, and remarks about the smell of her vagina, her vaginal lubrication and that she had plenty of lubrication.

Dr. Feigel reluctantly acknowledged on cross-examination that he does make comments such as “nice tummy” and other comments about a patient’s appearance to pregnant patients who have lost weight. As indicated previously, the Committee did not accept Dr. Feigel’s evidence that he only makes such comments to his obstetrical patients and rarely.

There was disagreement about where Dr. Feigel may have gone or what Patient B might have heard when Dr. Feigel left her in the examination room. The Committee finds no relevance to where Dr. Feigel went after he left Patient B in examination room 2. Dr. Feigel acknowledged he does not remember Patient B and that he himself cannot say for certain what he did when he left the room. He was able to state what he usually does when he leaves a patient in an examination room. Patient B testified that she heard him say “how are you today” and the Committee considers it plausible she may have heard him greet another patient on route to his work station or examination room number 1. Patient B’s testimony was that she saw him open the door of examination room 1 and they disagreed on whether it was possible to close the door to examination room 2 and while opening the door to examination room 1. Dr. Feigel testified that it is not possible for him to close the door to examination room 2 and open the door to examination room 1 at the same time.

The Committee was not able to determine whether this was possible based on the photographs and video recording of Dr. Feigel's office. However, the Committee accepted Dr. Feigel's evidence on this point. The Committee concludes that this may be an issue of misinterpretation or imperfect memory of Patient B. While Patient B may have been mistaken on this minor point, the Committee concluded that this detail related to the end of her appointment when she was angry and upset, and did not impact her overall credibility on the key issues. While Patient B was wrong about Dr. Feigel closing one door while opening the other, the Committee accepts that she could have heard Dr. Feigel greet the next patient. In the Committee's view, Patient's B's erroneous memory of Dr. Feigel having a hand on both doors does not affect her credibility or the reliability of her evidence regarding the remarks made to her at the appointment.

The Committee accepts Patient B's testimony that she told Dr. Feigel to "fuck off" three times. Part of the reason that the Committee believed Patient B was that she testified that she felt this had been a "stupid" thing to do and that she was ashamed of herself for saying this. She had to be told by College counsel that it was acceptable to use the words "fuck off" in her testimony to clarify what she meant by "F off." The Committee accepts these were strong words for Patient B. She described feeling under a great deal of stress and feeling scared, enraged and "unnerved" by Dr. Feigel staring and the way in which he had conducted portions of her exam. She was clear she wanted him to stop what he was doing. Further, Patient A, Patient B, Ms. Turner and Dr. Feigel testified that muffled conversation could be heard from one room to the next in the office. Patient B testified that she did not raise her voice when she said this to Dr. Feigel.

Dr. Y's notes had indicated that Patient B had told her she told Dr. Feigel to "get your fucking hands off my breasts." Patient B said she told Dr. Feigel to "fuck off" three times. Although Patient B stated she trusts Dr. Y, believes Dr. Y to be honest and did not suggest Dr. Y would write something that was not true, Patient B remained consistent in what she had said to Dr. Feigel (i.e., that she told him to "fuck off") when she was challenged in cross-examination. The Committee notes that Dr. Y was not called to give evidence about what Patient B said on the call.

The witnesses testified that muffled conversation could be heard in Dr. Feigel's office from one location to another. Dr. Feigel testified that if his assistant Ms. Turner heard raised voices or screams of pain that she would run into the examination room. He suggested that Ms. Turner always does this. He subsequently said the only time Ms. Turner has come into an examination room is when he was performing a very painful procedure on a patient and her presence was requested. Ms. Turner, in her evidence, said she would run into a room if she heard raised voices or screams of pain but on cross-examination admitted she had never done so in her 21 years of employment with Dr. Feigel, contradicting Dr. Feigel's testimony.

The Committee finds that Dr. Feigel's evidence was misleading in this regard, suggesting that Ms. Turner had come into the examination rooms in the past upon hearing a patient cry out in pain when in fact Ms. Turner had never done so. Patient B gave evidence that she told Dr. Feigel to "fuck off" three times and the Committee is of the view that Dr. Feigel testified in this manner to suggest that if Patient B had told him to "fuck off," Ms. Turner would have heard it and would have run into the room and given Ms. Turner did not hear this or run into the room, then Patient B did not tell him "fuck off." The Committee accepts Patient B's evidence that she felt scared and frozen and did not raise her voice when she told Dr. Feigel to "fuck off".

On first consideration, it seems very reasonable that a doctor would be "running," as Dr. Feigel said he would, if a patient told him to "fuck off." He said he would not be there to hear that a second or third time. Despite that testimony, the Committee finds that Patient B made those comments.

Besides the fact that the Committee had difficulties with Dr. Feigel's credibility and reliability, other factors that contributed to the Committee's finding that Patient B did make those comments.

There is evidence that Patient B tried to talk to Dr. Feigel during the examination. She thought the breast examination was not normal as she said she asked the doctor what a

breast exam had to do with endometriosis. (That is why she thought she had a referral). She testified that Dr. Feigel did not respond to her question.

Later during the speculum examination, after he told her that she was well lubricated and had a sweet smell, she again made attempts to have a conversation with him after he told her that the cervical cysts were gone. Patient B testified that this did not “go well or too far”, which the Committee took to mean that Dr. Feigel was not responding to her.

Dr. Feigel testified that he saw eight to ten patients an hour, which he admitted did not give him long with each patient. He told the police, and admitted in cross-examination, that he had “stuff” to do when he entered the examination room as he always had patients waiting.

Dr. Feigel testified he did not remember Patient A, who was also of Polish background. He had known her for 20 years and had seen her many times over the years. Although he testified that he remembers faces better than names, he would not have recognized her on the street, he said. Dr. Feigel also testified that he does not recognize his patients if they say hello to him in a public place.

The Committee is of the view that Dr. Feigel is so focused on “the stuff” he has to do during his few minutes with a patient that he “tunes out” what they might be saying to him. Patient B did not appear to get responses to her comments or questions. His lack of recognition even for patients he has had for years also suggests an inherent lack of engagement with them. To recognize someone means paying attention to them in the first place and the Committee is not sure that Dr. Feigel listened to them either. In light of the foregoing, the Committee believes it is entirely plausible that Dr. Feigel did not “run” when Patient B said “fuck off” audibly twice and perhaps more quietly the third time through clenched teeth, because he was not paying attention or did not hear.

The fact that Patient B reported events immediately after they occurred to Ms X supports that she was upset after her appointment. Both Patient B and Ms X said the phone call

Patient B made to Dr. Y's office following her appointment with Dr. Feigel was brief and that only a few details of the visit were discussed. Her initial comment to Ms X during the call was to ask if she was "overreacting." This is consistent with testimony that telling the doctor to "fuck off" was stupid and she was too embarrassed to use the language at the hearing. She felt uncertain of herself in both instances.

The Committee finds that the "fuck off" comments were made and it is entirely plausible that Dr. Feigel did not hear them or they did not register with him.

The Committee understands that it would be improper to use Patient B's upset state to conclude that Dr. Feigel had commented inappropriately towards her. It could be that she would be equally upset if she misunderstood what had occurred as she would be if Dr. Feigel had acted improperly (*Karkanis v College of Physicians and Surgeons of Ontario*, 2014 ONSC 7018 (Div. Ct) at para 51 and para 67).

Patient B testified that Ms X had not told her about Patient A and Ms X testified she did not think she had told Patient B about Patient A because that was Patient A's personal business. The Committee finds Patient B's account of her phone call to Ms X credible. It may be that Ms X's comment that the breast examination was unusual or inappropriate heightened Patient B's view of what happened in retrospect.

Patient B testified she had been told by Paul Lobsinger, the College investigator, that there was another complainant. He did not tell her who the other complainant was, nor did he give her any of the details of the complaint.

Counsel for Dr. Feigel submitted, however, that Patient B's misperception about the breast examination (in that she believed that the pinching or twisting of her nipples by Dr. Feigel was sexual in nature) coloured her perception of the events in Dr. Feigel's office, including that Dr. Feigel "took too long" and was "in the wrong place" while conducting the internal examination. Counsel further submitted that as a result these misperceptions, Patient B decided to fabricate evidence about all of the key remarks made by Dr. Feigel -

the comments that Patient A was gorgeous or sexy, the comments concerning her breasts and questions concerning her nipples, the comments about her navel ring and the comments about her vagina. Counsel submitted as follows:

Now, I want to talk a little bit about the gorgeous, lovely breasts, beautiful vagina. Again, none of this happened. Like, absolutely did not happen, and it's all a function, as I say, of [Patient B] believing she's been sexually assaulted by Dr. [Feigel], and believing more or less that the end justifies the means.

Now, what happened is that Ms X shared with her, I would suggest, something to the effect that [Patient A's] complaint had to do with speaking to her in a, let's say, inappropriate way. And so, armed with that information, Patient B believed that Dr. Feigel was the kind of guy who would compliment patients and say nice things or say inappropriate things. And so, when she got that little tip off from Ms X, she decided, well, if he said that to her, he said those kinds of things, people would believe he said those things to me.

So, she, [in] my respectful submission, she just made it up. There's nothing more complicated than that. She was so angry, she was so convinced that she was sexually abused that, you know, the details don't matter. You know, I've been wronged here and this person is going to pay.

The Committee accepts that Patient B misperceived certain physical touching during the breast examination as being sexual in nature. The Committee also accepts that perhaps this perception did influence Patient B in her description of Dr. Feigel's stare as being "vile." However, the Committee rejects the submission that Patient B fabricated evidence. There was no indication in her evidence that she was out to "get even" with Dr. Feigel or make him pay. She testified that she trusted Dr. Y and wanted to trust Dr. Feigel. As noted above, she was able to acknowledge when she made an error and did not fill in the gaps when she was uncertain of an answer. She gave direct answers to questions asked and did not try to tailor her evidence.

Further, for counsel's theory to work, it would require the Committee to find that Ms X told Patient B details concerning Patient A's complaints (which, as set out below, the Committee finds did not happen). Not only did Patient B deny that this happened, but it was denied by Ms. X as well. The Committee found Ms X to be a credible witness and her evidence reliable and accepts her evidence regarding what she told Patient B. Without knowledge of the particulars of Patient A's complaint (at least that it involved compliments and saying inappropriate things), the theory advanced fails.

The Committee accepts Patient B's evidence that Dr. Feigel made remarks to Patient B about her breasts of a sexual nature, for no clinical purpose. Despite Patient B's concerns regarding the necessity or propriety of the nipple exam and how she said she felt during the nipple exam, the Committee does not find that she misunderstood or exaggerated the remarks that he made about her breasts.

The Committee finds Patient B credible and her evidence reliable on the key issues. She gave an honest account of what happened at her visit with Dr. Feigel. She had no interest in the outcome, was able to acknowledge when she made an error and did not fill in the gaps when she was uncertain of an answer. She may have been mistaken on whether or not there was a stool in examination room 2 and where Dr. Feigel went after he left her in examination room 2, but the Committee felt these were minor points and they did not impact her credibility or the reliability of her testimony.

Overall, the Committee found Patient B to be a credible witness and her evidence reliable.

Findings re Patient B

The Committee accepts the evidence of Patient B regarding the remarks made by Dr. Feigel during the appointment on February 27, 2014.

The Committee accepted Patient B's evidence that Dr. Feigel told her that she was beautiful and gorgeous during her appointment prior to the breast examination. The Committee finds that the comments by Dr. Feigel that Patient B was beautiful and gorgeous are remarks of a sexual nature when viewed in the context of the appointment as a whole, including that they were made while Patient B was undressed and covered only by a paper sheet awaiting physical examination and just prior to intimate breast, abdominal and pelvic examinations during which other sexual remarks were made.

The Committee finds that Dr. Feigel made remarks to Patient B regarding her having beautiful breasts during a breast examination, while her breasts were exposed. Patient B was not certain whether the comment was made while Dr. Feigel was touching her breasts or merely looking at them, but in either respect, the comments were made about a part of her body connected to her sexuality and while her breasts were exposed. The Committee also finds that Dr. Feigel asked Patient B if she had sensitive nipples and if she enjoyed it when her husband sucked on them during the breast examination. In addition to fact that the remarks concerned her breasts and were made during the breast examination while her breasts would have been exposed, these particular remarks were overtly sexual in nature.

The Committee finds that Dr. Feigel remarked that Patient B's navel ring was "so sexy" while her abdomen and breasts were exposed and while Dr. Feigel had one hand on her abdomen and the other near her pubic area. The Committee finds that the remarks were of a sexual nature, given the nature of the statement ("so sexy") made while he was looking at her abdomen, combined with the location of his hands.

The Committee also finds that Dr. Feigel remarked that Patient B had a lovely vagina, that it had a sweet smell and that it had plenty of natural lubrication "just as he thought," during the internal examination. These remarks were made concerning the portion of a female's anatomy most connected to her sexuality and were made during an internal examination, while Patient B's pubic area was completely exposed to Dr. Feigel.

The Committee is not making any finding that the touching of Patient B's abdomen, breasts or vagina was inappropriate or not required for a clinical purpose. Rather, the fact that Dr. Feigel was looking at or touching her breasts in the first case, touching her abdomen and his other hand was near her pubic area in the second, and that he was performing a speculum examination in the third case, provide important context, which reinforces the finding that the remarks were of a sexual nature.

The Committee finds the allegation of sexual abuse of Patient B, by remarks of a sexual nature prior to and during the course of intimate physical examinations at a medical appointment, is proven.

Issue 2: Did Dr. Feigel engage in an act or omission that would be reasonably regarded by members as disgraceful, dishonourable or unprofessional by making comments and a gesture of a sexual nature and/or inappropriate comments to Patient A and/or by making comments of a sexual nature and/or inappropriate comments to Patient B?

The Committee found that Dr. Feigel sexually abused Patient A and Patient B: Patient A by remarks and a gesture of a sexual nature at an appointment in January 2014 and by a remark of a sexual nature on prior appointments; Patient B by remarks of a sexual nature prior to and during the course of intimate physical examinations at a medical appointment in February of 2014. Such behavior is inappropriate and offensive and does not accord with appropriate doctor-patient interactions during medical appointments. The Committee finds that Dr. Feigel's conduct in this regard would reasonably be viewed by members as disgraceful, dishonourable and unprofessional.

The Committee also finds that Dr. Feigel's comments to Patient A that she had a nice tummy or belly at medical appointments in the two years preceding her last appointment, would be reasonably regarded by members as disgraceful, dishonourable or unprofessional. The Committee accepted Patient A's testimony that Dr. Feigel made such

comments to her during this time period, based on the evidence and the assessment of their respective credibility. The Committee considered whether Dr. Feigel's comments were ill-advised attempts to make Patient A feel good or comfortable about her appearance. Even if this was the case, which is not clear, such remarks are not appropriate during clinical encounters. As Patient A testified, "...It was exam, and I just didn't expect comments about my body like this. I wasn't in plastic surgeon's office..." The Committee finds that the comments, "nice tummy or belly," were comments made by Dr. Feigel about Patient A's physical attractiveness during, and with no clinical relationship to, a physical examination. The Committee finds that such comments to Patient A during a physical examination at medical appointments were inappropriate and unprofessional.

Therefore, the Committee finds that this allegation is proven.

SIMILAR FACT EVIDENCE

It was College's submission that the evidence of each complainant is sufficient to establish, on a balance of probabilities, that the allegations of sexual abuse and disgraceful, dishonourable or unprofessional conduct have been proven in respect of each of their own allegations. In the alternative, it was argued that the evidence of either complainant could be used to corroborate the evidence of the other by considering similar fact evidence.

In considering the use of similar fact evidence in this case, the Committee reviewed and considered the submissions made by both College counsel and counsel for Dr. Feigel and the 2002 Supreme Court of Canada case of *R. v. Handy* to guide its decision on this.

From *Handy* the Committee understands the following:

1. At the outset similar fact evidence must be presumed inadmissible. There must be recognition of the general exclusionary rule against evidence going merely to

disposition or propensity bias. This mean coming to the conclusion of “bad personhood” or that the accused is “the sort of person likely to have committed an offense”.

2. The probative value of the evidence must exceed prejudicial effect in order for similar fact evidence to be admissible.
3. Probative value refers to the degree of relevance to the facts at issue and the strength of the inference(s). There must be similarities in the evidence to a degree such that absent collaboration it would be highly unlikely the similarities were due to coincidence. Similarities should have a high degree of distinctiveness and uniqueness in order to advance a live issue before the trier of fact.
4. Prejudicial effect refers to the “stigma of bad personhood” (moral prejudice) and the potential for distraction of the trier of fact from the focus at hand and undue consumption of time detracting from proper focus (reasoning prejudice). Does similar fact evidence deflect from a rational, dispassionate analysis? Can an allegation be proved with less prejudicial evidence to avoid these concerns?
5. Has there been collusion between witnesses?
6. The rise of the probative value of similar fact evidence does not necessarily cause a reduction in prejudicial effect.
7. The search for truth must always be balanced with fairness to the accused.

It is the opinion of the Committee that while there may be sufficient evidence to accept the use of similar fact evidence, the allegations of each complainant standing on their own have been proved to the requisite standard on the balance of probabilities. The Committee is sensitive to the potential prejudicial effect (both moral and reasoning prejudice) and agrees with the concept in *Handy* that it is preferable to prove allegations

with less prejudicial evidence where it is possible to do so. The Committee did not rely on similar fact evidence in coming to its findings.

SUMMARY OF FINDINGS

For the reasons outlined above, the Committee finds that Dr. Feigel made remarks of a sexual nature to both Patient A and Patient B and a gesture of a sexual nature to Patient A, during medical visits. He asked Patient A about masturbation in a non-medical manner and for a non-medical purpose while making a lewd gesture. He further told Patient A she was “sexy” at one or more prior medical appointments. He made remarks of a sexual nature to Patient B prior to and while performing physical examinations.

The Committee finds, having regard to all the evidence, that Dr. Feigel engaged in sexual abuse of patients as defined in subsection 1(3) (c) of the *Code*, by remarks and behavior of a sexual nature towards Patients A and by remarks of a sexual nature towards Patient B.

The Committee also finds that Dr. Feigel, in making remarks and a gesture of a sexual nature to Patient A at one appointment, a remark of a sexual nature and inappropriate remarks to Patient A at prior appointments and remarks of a sexual nature to Patient B, 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 and unprofessional.

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

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Feigel,
2019 ONCPSD 1**

**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. ROMAN FEIGEL

PANEL MEMBERS:

**DR. C. CLAPPERTON (CHAIR)
MR. J. LANGS
DR. T. MORIARITY
DR. S. WOODER**

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

MS A. CRANKER

COUNSEL FOR DR. FEIGEL:

MR. C. WILLARD

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. D. ROSENBAUM

PUBLICATION BAN

Penalty Hearing Date:	December 17, 2018
Penalty Decision Date:	December 17, 2018
Written Penalty Decision Date:	January 17, 2019

PENALTY DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard the matter of penalty on December 17, 2018, at Toronto. At the conclusion of the hearing, the Committee released a written order setting out the Committee’s penalty and costs order. The following are the Committee’s reasons for decision with respect to penalty and costs.

THE COMMITTEE’S DECISION OF JUNE 11, 2018

On June 11, 2018, the Committee delivered its written decision and reasons, which set out the finding that Dr. Feigel committed an act of professional misconduct in that: he engaged in sexual abuse of patients by remarks and behavior of a sexual nature towards Patient A and by remarks of a sexual nature towards Patient B; and that in making remarks and a gesture of a sexual nature to Patient A at one appointment, a remark of a sexual nature and inappropriate remarks to Patient A at prior appointments, and remarks of a sexual nature to Patient B, he 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 and unprofessional.

AGREED STATEMENT OF FACTS ON PENALTY

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

1. Patient B provided the College with a Victim Impact Statement dated October 11, 2018. Attached at Tab 1 [to the Agreed Statement of Facts on Penalty] is a copy of the statement.
2. On November 22, 2018, Dr. Feigel entered into an Undertaking with the College, resigning his certificate of registration and agreeing never to apply or re-apply as a

physician in Ontario or in any other jurisdiction. Attached at Tab 2 [to the Agreed Statement of Facts on Penalty] is a copy of the Undertaking.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for Dr. Feigel made a joint submission as to an appropriate penalty and costs order.

The joint submission included that Dr. Feigel attend before the panel to be reprimanded, reimburse the College for funding provided to patients under the program required under s 85.7 of the Code by posting an irrevocable letter of credit or other security acceptable to the College, within thirty days of the order in the amount of \$32,120.00, and that he pay costs of this proceeding to the College, in the amount of \$33,500.00, within thirty days of the order.

On November 22, 2018, Dr. Feigel signed an undertaking with the College to resign effective January 1, 2019 and not to apply or re-apply for registration as a physician to practise medicine in Ontario or any other jurisdiction after the effective date.

The Committee is aware that a penalty must be appropriate to the circumstances of the misconduct, and that it should reflect the accepted penalty principles of public protection, expressing the profession's abhorrence of the behaviour, maintaining the integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest, specific and general deterrence and, where applicable or appropriate, rehabilitation. The Committee must consider aggravating and mitigating circumstances.

The Committee is also aware that a joint submission on penalty 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 (*R v. Anthony-Cook*, 2016 SCC 43).

Nature of the Misconduct

Patient A

The Committee found that Dr. Feigel asked Patient A about masturbation in an inappropriate manner and unrelated to a clinical purpose by asking her if she was “entertaining” herself and making a lewd gesture to indicate masturbation. It also found that Dr. Feigel made comments to Patient A that she was “sexy” and had a “nice tummy” or “nice belly.” The Committee found that a comment that a patient is “sexy” is by definition a remark of a sexual nature, regardless of whether or not it is made during or in the context of a physical examination. Without further details about the circumstances in which the comment “nice tummy” or “nice belly” was made, the Committee did not conclude this was a sexual comment but did find that making this comment to a patient during a physical examination constitutes disgraceful, dishonourable or unprofessional conduct.

Patient B

The Committee found that Dr. Feigel told Patient B that she was “beautiful” and “gorgeous” during her appointment, and that these remarks were of a sexual nature when viewed in the context of the appointment as a whole, including that they were made while Patient B was undressed and covered by a paper sheet and awaiting intimate breast, abdominal and pelvic examinations.

The Committee also found that Dr. Feigel told Patient B that she had “beautiful breasts” during her breast examination while her breasts were exposed, and asked if she had “sensitive nipples” and “if she enjoyed it when her husband sucked on them.” The Committee found these remarks to have been overtly sexual in nature.

The Committee further found that Dr. Feigel told Patient B that her navel ring was “so sexy” while her abdomen and breasts were exposed and while he had one hand on her

abdomen and the other near her pubic area. The Committee found these remarks to have been of a sexual nature in the context of Dr. Feigel looking at Patient B's abdomen, combined with the location of his hands.

Finally, the Committee found that Dr. Feigel remarked that Patient B had a "lovely vagina." that it had a "sweet smell" and she had "plenty of natural lubrication" "just as he thought." These remarks were made during an internal examination while Patient B's pubic area was completely exposed to him.

In summary, the Committee found Dr. Feigel's behaviour to have been inappropriate, offensive and not in accordance with appropriate doctor-patient interactions.

Aggravating Factors

Dr. Feigel made comments of a sexual nature and/or inappropriate comments to more than one patient on more than one occasion. In the case of Patient B, she was undressed and undergoing intimate physical examination at the time sexual comments were made, heightening her vulnerability.

Dr. Feigel's conduct has clearly impacted Patient A and Patient B.

While Patient A did not provide the Committee with a victim impact statement at the penalty hearing, she provided evidence at the original hearing in which she described the comments Dr. Feigel made to her as shocking, inappropriate and intrusive, and said that his comments made her feel uncomfortable.

Patient B read her victim impact statement to the Committee at the penalty hearing. Her statement addressed the economic, emotional and social impact on her of the sexual abuse by Dr. Feigel, as well as the negative effect Dr. Feigel's conduct has had on her faith, confidence and trust in the medical profession. Immediately after the incident, she lost a part-time job, resulting in significant lost income. She described ongoing feelings

of anger, resentment and vulnerability and living life in “a state of constant fear, anger, depression and heightened anxiety.” She described experiencing low self-esteem and being embarrassed by her body. She has lost her social life and self-confidence and feels she has lost who she was before the incident. In her statement she said:

My dignity, my autonomy and my self-respect have all been compromised as a result of the abuse. My faith in myself and my faith in the world have been decimated.

Mitigating Factors

Dr. Feigel has no prior disciplinary findings. He has entered into an undertaking with the College in which he has resigned his certificate of registration effective January 1, 2019 and has agreed to never re-apply to practise medicine in this or any other jurisdiction.

Dr. Feigel agreed to the elements of the jointly proposed penalty, including posting an irrevocable letter of credit or other security for funding provided to patients under the program outlined above and he has agreed to pay to the College costs as outlined above.

Case Law

College counsel relied on four prior cases in support of the joint submission on penalty.

In *CPSO v. Rudd (2018)*, the Committee found that the physician engaged in disgraceful, dishonourable or unprofessional conduct. Dr. Rudd was an 85 year-old physician who failed to maintain boundaries or privacy in relation to one patient, by removing a drape, touching the patient’s buttocks and helping her pull up her trousers. With respect to a second patient, he made unprofessional and inappropriate comments about her appearance and personal life. He also did not obtain the patient’s consent during the examination in an appropriate manner and demonstrated insensitivity in instructing her in self-care. Dr. Rudd had previously received a caution from the College regarding

assisting patients with their clothing following anorectal examinations. Dr. Rudd entered into an undertaking to resign his certificate of registration and to never re-apply. The Committee accepted a joint submission on penalty and ordered that Dr. Rudd be reprimanded and pay costs.

In *CPSO v. Chung (2014)*, the Committee made a finding of professional misconduct, in relation to failure to maintain the standard of practice of the profession and engaging in unprofessional conduct. Dr. Chung was a family physician whose practice was predominantly in office gynecology and obstetrics. He carried out inappropriate and excessive intimate examinations and failed to ensure appropriate covering/draping for patients. In doing so, he demonstrated a lack of awareness of and respect for his patient's right to dignity and privacy. Dr. Chung entered into an undertaking to resign his certificate of registration and to never re-apply. The Committee accepted a joint submission on penalty and ordered that Dr. Chung be reprimanded and pay costs.

In *CPSO v. Beirsto (2017)*, the Committee found that Dr. Beirsto committed an act of professional misconduct in that he engaged in the sexual abuse of a patient and disgraceful, dishonourable or unprofessional conduct. Dr. Beirsto was a GP psychotherapist who provided treatment to Patient A with respect to marital breakdown. The Committee found he had behaved unprofessionally by giving her a back massage in a manner that constituted a boundary violation, giving her an explanation regarding vaginal infections in an inappropriate manner, making a comment that she would make a "good lover", performing a chest examination in an inappropriate manner, and hugging and kissing the patient at the end of appointments. The Committee also found that Dr. Beirsto stroked Patient A's buttocks without clinical reason for doing so, which it found to be both sexual abuse and disgraceful, dishonourable or unprofessional conduct. The Committee ordered the revocation of Dr. Beirsto's certificate of registration, a reprimand, funding for patient therapy and costs of the proceeding.

In *CPSO v. Dr. Dao (2018)*, the Committee made a finding of professional misconduct in that Dr. Dao engaged in sexual abuse of a patient as well as disgraceful, dishonourable or

unprofessional conduct. Dr. Dao was a 41 year-old physician practising in chronic patient management. He made inappropriate sexual comments to a patient with respect to a tattoo, the placement of her tattoo, about sexual acts and about sadomasochism. Pursuant to a joint submission, the Committee ordered a reprimand, a three-month suspension of Dr. Dao's certificate of registration, instruction in communication, a practice monitor for all patient encounters until communication instruction was completed, funding for patient therapy and costs of the proceeding.

The Committee accepts the principle that like cases should be treated alike, but it also recognizes that no two cases are identical, and the penalty in each case must be tailored to the facts and circumstances of that case.

The four cases provided by College counsel are sufficiently similar in terms of the nature of the misconduct and the penalties ordered to assist the Committee in accepting the joint submission on penalty in Dr. Feigel's case.

In two of the cases, the Committee ordered that the physician be reprimanded and pay costs pursuant to a joint submission after the physician resigned his certificate of registration and undertook never to re-apply. In Dr. Beirsto's case, there was no joint submission and the Committee ordered revocation of his certificate of registration. In the case of both Dr. Beirsto and Dr. Dao, funding for patient therapy and counselling was an element of the penalties. In the case of Dr. Dao, the Committee ordered a three-month suspension, but Dr. Feigel's misconduct was more serious than Dr. Dao's in that it pertained to more than one patient and therefore demonstrated a pattern of conduct, and he made comments of a sexual nature about a patient's body during or just prior to intimate examinations, at a time when the patient was most vulnerable.

Conclusion

The Committee accepted the joint submission on penalty as appropriate and in keeping with the range of penalties in the cases presented. The Committee was of the opinion that the proposed penalty properly addressed the relevant penalty principles.

The Committee views Dr. Feigel's behavior as despicable. A physician has a fundamental obligation to do no harm, to treat patients with dignity and respect and to place the needs of their patients before their own. Dr. Feigel caused harm to both Patient A and Patient B by violating the trust they placed in him for his own self-serving purposes. Patient B's life has been altered in a dramatic way and her trust in the medical profession has been eroded as a result of his actions. The Committee agrees with Patient B's statement: "When a physician barges through the sacred boundaries of the doctor-patient relationship... the damages can be life-long lasting."

The reprimand will serve as a general deterrent and will demonstrate that inappropriate comments of a sexual nature made by physicians to patients will be dealt with seriously.

Dr. Feigel's undertaking to resign his certificate of registration and to never re-apply in this or any other jurisdiction is a greater sanction than the Committee has jurisdiction to order. The Committee is satisfied that the fact Dr. Feigel will never again be in a position to provide medical care to patients ensures that the public is protected.

All of the elements of the penalty serve to maintain the public's confidence in the medical profession and the College's ability to regulate the profession in the public interest.

ORDER

The Committee stated its findings in paragraph 1 of its written order of December 17, 2018. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Feigel appear before the panel to be reprimanded.
3. Dr. Feigel reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, within thirty (30) days of this Order in the amount of \$32,120.00.
4. Dr. Feigel pay to the College its costs of this proceeding in the amount of \$33,500.00 within thirty (30) days from the date of this Order.

At the conclusion of the hearing, counsel for Dr. Feigel presented the Committee with a written waiver by Dr. Feigel of his right to an appeal under subsection 70(1) of the Code, and stated that Dr. Feigel would not be attending his public reprimand. The Committee therefore administered the public reprimand in Dr. Feigel's absence. The Committee is disappointed that Dr. Feigel did not appear to receive his reprimand.

TEXT of PUBLIC REPRIMAND
Delivered December 17, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. ROMAN FEIGEL

Dr. Feigel,

The Panel is disappointed that you did not appear here today for your reprimand.

It is always sad to see a physician end his career with proven allegations of professional misconduct and especially sexual abuse. Your actions caused distress to both victims and we heard today about the particular harmful effect of your actions on one of them. As physicians, we take the Hippocratic Oath to do no harm to our patients. Yet, you caused harm to your patients in violation of your oath for your own self-serving purposes.

What you did was despicable. The life of one of your victims has been altered in a dramatic way because of your actions. We heard about her constant fear, anger, and heightened anxiety and the difficulties she has experienced. Moreover, this has affected her ability to seek medical care. The Panel was particularly taken with Patient B's statement that "When a physician barges through the sacred boundaries of the doctor-patient relationship, I believe the damages can be life-long lasting,"

The public invests great trust in the medical profession, and in turn, the public expects physicians to place patients' needs before their own and to treat their patients with respect and dignity. You did none of these things. Accordingly, it is very fitting that you have resigned your certificate of registration and have undertaken to never reapply. You will not be in a position to harm a patient again.