NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. David Stewart Lambert, this is notice that the Discipline Committee ordered that there shall be a ban on publication of the identity and any information that would disclose the identity of the patients whose names are disclosed at the hearing or in documents filed at the hearing, under subsection 45(3) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

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

> Every person who contravenes an order made under … section 45 or 47… is guilty of an offence and on conviction is liable,
>
> > (a) in the case of an individual to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence; or
> >
> > (b) in the case of a corporation to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence.

Indexed as: Lambert (Re)

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

IN THE MATTER OF an Application for Reinstatement referred by the Registrar to the Discipline Committee of the College of Physicians and Surgeons of Ontario, for a Hearing pursuant to Section 73 of the ***Health Professions Procedural Code***

BETWEEN:

DR. DAVID STEWART LAMBERT

- and -

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

PANEL MEMBERS:

DR. C. CLAPPERTON (Chair)
S. BERI
DR. P. CHART
D. EATON-KENT
DR. P. HORSHAM

Hearing Date:	**April 6, 2009**
Decision Release Date:	**June 30, 2009**
Release of Written Reasons:	**June 30, 2009**

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

Dr. David Stewart Lambert ("Dr. Lambert") made an application to the College of Physicians and Surgeons of Ontario (the "College") for reinstatement of his certificate of registration under s. 72(1) of the *Health Professions Procedural Code* (the "Code"), Schedule 2 to *the Regulated Health Professions Act* ("*RHPA*"). Dr. Lambert's certificate of registration had been revoked by the Discipline Committee for professional misconduct, which included sexual abuse of patients, on May 16, 2002. The Registrar referred Dr. Lambert's application for reinstatement to the Discipline Committee pursuant to s. 73(1) of the Code, and the Committee heard the application on April 6, 2009. The College consented to Dr. Lambert's reinstatement, provided that it was on terms which the parties had jointly proposed. At the conclusion of the reinstatement hearing, the Discipline Committee reserved its decision.

OVERVIEW OF THE CASE

Dr. Lambert is a 57-year-old physician who received his medical degree from the University of Ottawa in 1978 and completed further training in family medicine at the University of Toronto (1978-80). He practised in Scarborough and remained there (except for a six month period when his certificate was suspended) until the revocation of his certificate of registration in 2002. During this time he was involved in emergency work, family practice with various partners and entrepreneurial activities which resulted in long work hours and significant financial reward. During these years, he was troubled with marital problems, family problems, financial setbacks, and legal problems with professional colleagues and those involved in his entrepreneurial activities. He ran afoul of the College first in 1991 when a Discipline Committee found him to have committed an act of professional misconduct by making inappropriate and unprofessional comments that were sexually expressive and vulgar. As a result, he was ordered to be reprimanded, and his licence was suspended for six months. In May 2002, Dr. Lambert was back before the Discipline Committee to face allegations of sexual abuse and of having

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. There were four complainants, and a spectrum of improper sexual abuse and other behaviour, including comments of a sexual nature, was proven. This included sexual touching of an egregious nature recorded on video by one patient. The Committee found Dr. Lambert to have committed acts of professional misconduct including sexual abuse of patients. It ordered that Dr. Lambert's certificate of registration be revoked effective immediately, that he attend before the Committee to be reprimanded, that he post security of $30,000 to reimburse the College for funding to patients under the program required under section 85.7 of the Code, and that he pay costs to the College of $28,750.

Dr. Lambert now seeks to have his certificate of registration reinstated on the grounds that he has changed and has gained insight into his aberrant behaviour such that he no longer constitutes a threat to the public. He maintains that he has worked at understanding and addressing the factors leading to his misconduct and has actively participated in continuing medical education ("CME"). Dr. Lambert supported this application with the lengthy psychiatric assessment report by Dr. A. The College also submitted psychiatric assessment reports (Dr. B, Dr. C) which take issue with some of the points in Dr. A's report. Dr. Lambert has agreed to comply fully with the recommendations of the College's experts with respect to terms, conditions and limitations upon his return to practice.

The parties have come to an agreement regarding terms, limitations and conditions to be imposed on Dr. Lambert's certificate of registration upon his proposed return to practice which include limiting his practice to adult males, ongoing therapy, monitoring of his practice, compliance with a re-entry to practice program required by the Quality Assurance Committee, and other restrictions regarding services he may perform.

Subsequent to the hearing, the Committee advised counsel for the parties that it was proposing to impose some additional conditions on Dr. Lambert's reinstatement, and it

asked counsel for comments. Counsel provided written comments, and the Committee has taken those comments into consideration in making its decision.

The Committee has carefully reviewed the evidence submitted and the submissions of the parties and concluded that Dr. Lambert should have his certificate of registration reinstated on the conditions proposed, as well as some additional conditions, referred to below. In its reasons, the Committee seeks to ensure that those charged with administering, assessing or monitoring Dr. Lambert have the information and direction they require from this Committee, so that the safeguards which are put in place for the public are effective.

ISSUES: APPLICATION FOR REINSTATEMENT

The issue before the Committee is: Will the public be adequately protected if Dr. Lambert returns to medical practice with the terms, conditions and limitations imposed on his certificate of registration that the parties propose?

DECISION AND REASONS

The Committee will set out its decision and reasons on this matter as follows:

(i) Legal framework, general principles and applicable case law
(ii) Evidence submitted
(iii) Relevant factors
(iv) Risk factors and proposed management
(v) Conclusion

i) Legal Framework, general principles and applicable case law

The legislation allows for reinstatement, even after misconduct such as sexual abuse, and it sets out the process to be followed. The relevant provisions of the Code are ss. 72, 73 and 74.

Under s. 72(1), a person whose certificate of registration has been revoked as a result of disciplinary proceedings may apply in writing to the Registrar to have a new certificate of registration issued. Under s. 72(3), an application may not be made in relation to a revocation for sexual abuse of a patient, as in this case, earlier than five years after revocation. Dr. Lambert's application was brought more than five years after the revocation of his certificate.

Under s. 73(1), the Registrar is required to refer the application to the Discipline Committee for a hearing. Under s. 73(5), a panel may, after a hearing, make an order doing any one or more of the following:

1. Directing the Registrar to issue a certificate of registration to the applicant.
2. Directing the Registrar to remove the suspension of the applicant's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration.

The legislation is silent with regard to the test to be applied in cases of reinstatement; however, legal reference materials and prior decisions of the Discipline Committee have given guidance. The Committee had regard to the criteria and references cited in *Waxman v. CPSO* (June, 2008). Factors to be considered include (but are not limited to) the facts giving rise to the revocation; any change in the physician's circumstances since the time of revocation; understanding and insight into the misconduct; rehabilitation or lack thereof; current mental health and future prognosis; current competency, skill and fitness to practise; the physician's character; and the public interest, particularly the protection of the public.

In applications for reinstatement the burden of proof is on the applicant to establish suitability for reinstatement of his or her certificate of registration. The standard of proof to be applied is on the balance of probabilities.

In this matter there is a jointly-submitted position on terms, conditions and limitations. The Committee is aware of the direction of the courts that joint submissions should not be disturbed, unless in the Committee's opinion the proposed order would be contrary to the public interest and would bring the administration of justice into disrepute.

The Committee is also mindful that its prime concern is to ensure that the public is protected. The Committee must be satisfied that the public would be adequately protected if the physician is permitted to re-enter practice.

(ii) Evidence submitted

The Committee admitted into evidence the following materials as exhibits:

- Decision and Reasons of the Discipline Committee, dated August 6, 2002, in respect of *C.P.S.O v. Dr. David Lambert.*
- Decision and Reasons of the Discipline Committee, dated December 9, 1991, in respect of *C.P.S.O. v. Dr. David Lambert.*
- Document Books produced by Dr. Lambert, containing a psychiatric assessment of Dr. Lambert by Dr. A, dated May 15, 2008; a report of Dr. D, a forensic psychologist, dated August 6, 2007; a letter from Dr. E, a neurologist, dated November 19, 2007; and a social work assessment report by Ms. F, dated August 7, 2007.
- A list of journals read by Dr. Lambert from 2004 to 2009, and an index of CME courses taken from 2002.
- Document Book produced by the College, containing a psychiatric assessment of Dr. Lambert by Dr. B, dated March 18, 2009; a psychiatric assessment of

Dr. Lambert by Dr. C, dated March 17, 2009; and a report by Dr. G, a psychologist, dated February 18, 2009.

(iii) Relevant Factors

In making its decision, the Committee first addressed the factors to be considered in order to determine whether the public would be adequately protected if Dr. Lambert returned to medical practice. The relevant factors considered in this matter are set out as follows:

(a) Facts related to Discipline Committee findings including other interactions with the College in respect of its regulatory function;
(b) Change in circumstances subsequent to revocation;
(c) Psychiatric diagnosis, current status and future prognosis;
(d) Character of the physician;
(e) Success of rehabilitation including insight;
(f) Current competency, skill and fitness to practise; and
(g) Competing interests/entrepreneurial activities.

(a) Facts related to Discipline Committee findings including other interactions with the College in respect of its regulatory function

Dr. Lambert was first before the Discipline Committee in September of 1991, and was found to have committed professional misconduct for acts which would reasonably be regarded by members as unprofessional. There were three complainants. Dr. Lambert made inappropriate comments regarding a patient's breasts, inappropriately remarked on personal information of a family member, made gratuitous comments and sexual comments and used grossly offensive language, referring to one patient as a "slut". The panel also found his behaviour improper when he initiated a "fake" telephone call to a patient's mother describing the patient in vulgar sexually-expressive language.
Dr. Lambert offered that he said a lot of silly things in a flippant and humorous fashion. The Committee concluded that the remarks, although sexual in nature, were not made for

the purpose of initiating sexual activity. However, they were clearly grossly improper, demeaning and disgraceful. A six month suspension and a reprimand were ordered.

Dr. Lambert was again before the Discipline Committee in May 2002. This was the matter that resulted in the revocation of his certificate of registration. There were two allegations. The first and most serious was sexual abuse of three patients. With one patient, the abuse consisted of sexual touching in his office on several occasions including kissing, oral/genital contact and genital/genital contact, display of his bare erect penis and numerous sexual comments. This patient videotaped two visits which demonstrated the sexual abuse. In respect of the other two patients, the sexual abuse consisted of inappropriate sexual comments including comments regarding the patient's breasts, invitation to engage in oral sex, and a suggestion that both disrobe and give each other a back rub. Dr. Lambert's initial response to the College was a categorical denial (May 23, 2001). In the face of the videotape evidence he stated "if it's on the video, I did it, otherwise I don't recollect". He tried to implicate patients in initiating sexual comments and activities. The second allegation of disgraceful, dishonourable and unprofessional behaviour was proven in respect of a fourth patient, to whom Dr. Lambert attempted to sell a non-medical product during the course of a routine visit for blood tests, and became angry when she declined, and when she refused to provide him with the names of her friends. Dr. Lambert suggested that he was under a great deal of stress (financial, marital, family) at the time. In its reasons for penalty, the Committee commented on the repeated nature of the sexual acts/remarks even after a previous suspension for similar remarks. The Committee noted also the escalation of the sexual offences from remarks to sexual activity.

In considering the above information, the Committee had particular regard for the range of misconduct which included serious, repeated and escalating sexual abuse, denying the allegations until faced with videotaped evidence, lack of forthrightness with the College and with assessing physicians, self-serving recollection, lack of appreciation of patient privacy and a general lack of empathy and concern for the effects of Dr. Lambert's actions on his patients. The Committee was further concerned with Dr. Lambert's

tendency to blame patients for inviting his sexual advances and a lack of respect for the College and its processes.

(b) Changes in circumstances subsequent to revocation

Dr. Lambert supports his application for reinstatement with evidence of psychiatric and psychotherapeutic treatment, group therapy and taking sensitivity training (the Boundaries Course). Dr. Lambert claims to have recognized his responsibility for his misconduct and to have a full understanding of maintaining professional boundaries in respect of physician/patient relationships. He further notes that his marital problems have been resolved (he was divorced in 2004), and he is currently in a stable relationship. His concerns for his son have lessened and some of the legal issues and financial issues he has been involved in have been settled.

Dr. Lambert has had a number of psychiatric/psychological assessments since his revocation, including Dr. A (2004-2007), Dr. D (2007), Dr. B (2008), Dr. C (2009), and Dr. G (2009). He was also seen by Dr. H and Dr. I, but their reports were not before the Committee. Additionally, since 2003, Dr. Lambert has seen Dr. J, both for individual psychotherapy (twice weekly and ongoing) and in the Father Loss and physicians groups. Dr. A opined that Dr. Lambert had, through his therapy, developed insight into the causes of his self-sabotaging behaviour and that he had a fuller understanding of the depth and seriousness of his wrongful conduct and its effect on patients, on the profession and on himself. This was disputed by Dr. B and Dr. G, who felt that Dr. Lambert's understanding of the cascade of events leading to the boundary violations was poor. As late as 2009, Dr. C had the impression that some of Dr. Lambert's reported improvement was superficial. Dr. A stated that while Dr. Lambert had made progress, he recommended continuing his one-to-one psychotherapy as there are issues that require further monitoring and resolving including self-esteem, family relationships, his losses and patient empathy. Throughout the reports submitted there is a consistent pattern of Dr. Lambert's sense of victimization, excuses for his behaviour and casting blame on

others. He continues to manifest inappropriate behaviour including leaving business cards regarding his entrepreneurial activities with the receptionist when seeing Dr. B for a psychiatric assessment, a clear boundary violation.

In summary, it was clear to the Committee that Dr. Lambert has yet to take full responsibility for his actions and there remain a number of issues which require attention. Therefore, terms, conditions and limitations must be placed on his certificate of registration in order to manage the risk that these issues may constitute in the context of a return to practice.

(c) Psychiatric diagnosis, current status and future prognosis

The Committee has had the benefit of a number of in-depth psychiatric reports on Dr. Lambert which are consistent in finding narcissistic personality features. Dr. B and Dr. C both opine that Dr. Lambert has narcissistic personality disorder. His early years of practice were characterized by arrogance, a sense of self-importance and entitlement, lack of empathy, an inflated sense of his own self-worth, a sense of being envied by others, externalization of blame, impulsivity and a pervasive concern with financial success. His behaviour was often pretentious and he felt victimized in his professional relationships with partners, patients and the College. Notwithstanding the above, the reports do not support a major psychiatric disorder such as schizophrenia or bipolar disorder. There is general agreement that Dr. Lambert is more at risk of acting out during times of increased stress, which in the past have revolved around finances, family and legal troubles. None of the reports reviewed indicate that Dr. Lambert is a sexual predator. There was no evidence that drug addiction, gambling or alcoholism had any role in his past misconduct.

As recently as 2009, based on Dr. B's report, Dr. Lambert still exhibited a significant sense of victimization related to the events leading to his revocation, along with minimization and impaired memory for details. Dr. Lambert remains eager to blame the loss of his parents, being set up by patients and being taken advantage of by family and business partners for his various problems, which suggests that he still has not yet taken

full responsibility for his actions. While understanding the need for balance in his life, he remains concerned about finances and voiced a need to return to his prior income level. Finances appear to factor highly as a motive for resuming his practice of medicine. For example, he told Dr. G (see page 6 of his report) that he financially needs to return to his previous income level. The Committee believes that his expectations are unrealistic in light of the restrictions proposed. The Committee also had regard for Dr. B's comment that his sense was that Dr. Lambert's "moral compass" may not be expected "to point to the magnetic north of patient-centred practice in all circumstances, absent monitoring or surveillance for some significant period of time."

It was clear to the Committee that Dr. Lambert faces some future challenges which will need to be managed by monitoring his practice and ongoing psychotherapy. The achievement of balance when he resumes practice will be difficult in light of his perceived financial pressures and his focus on material wealth. The Committee had regard for the stressful lifestyle upon return to practice and the need to have supportive mechanisms in place, including recognition of triggers for relapse and a management plan. The Committee believes that, based on personality characteristics, lack of patient empathy, financial motivation and a failure to fully take responsibility for his past actions, Dr. Lambert requires a supportive ongoing program of psychotherapy in order to ensure that he does not represent a risk to patients.

(d) Character of the Physician

Honesty and integrity in professional relationships both with patients and the College is expected by the public and forms the basis of public trust. Dr. Lambert denied the allegations made against him in 2002, and has also exhibited a lack of forthrightness. Past behaviour included providing patients with a "skin-tightening" or "endermology" machine, which he admitted was not effective. His coercive promotion of his skin care products to patients demonstrates an exploitation of patients, and using his role as a physician to access clientele for the purpose of personal financial gain. It would appear

that he will still require some assistance in understanding the inappropriate nature of such activity, given that he attempted to sell these products to the staff of the reviewing psychiatrist, Dr. B.

The Committee is also concerned with Dr. Lambert's self-serving disclosure. He admitted to Dr. C (see pages 31-32 of his report) having repeatedly provided notes to patients for purposes of application for disability coverage in questionable circumstances. His provision of insurance forms, *etc*. for patients when they were not properly indicated, is troubling.

The Committee concluded, supported by the opinions of the reviewing psychiatrists, that there should be limited reliance on Dr. Lambert self-reporting in view of his variable description of events and interpretations of situations to his advantage. As outlined above, there are a number of aspects of Dr. Lambert's character that are troubling, and that speak to the need for his practice to be carefully monitored if he is to be reinstated, in the interest of public protection.

(e) Success of rehabilitation including insight

Dr. A completed an assessment of Dr. Lambert based in part on a number of sessions between 2004 and 2007 (a total of 17 hours). Dr. A reported a change from 2004 to 2007 – significantly, Dr. Lambert was more aware of the details of the complaints made against him, demonstrated more insight into the psychological dynamics causing his acting out, and was able to voice the potential harm to patients including their physical and emotional well-being. He spoke of betrayal of the public trust and the negative effects of his behaviour on the profession. His defensiveness with respect to resentment and blaming patients was largely, though not completely, gone. It was Dr. A's view that Dr. Lambert understood and took responsibility for his prior misconduct and has made significant progress. Nonetheless, he advised continued one-on-one psychotherapy for issues that require monitoring and resolving. These include self-esteem, family

relationships, addressing his losses, and his need to improve his sensitivity regarding the impact of his behaviour on patients.

Dr. B's assessment of Dr. Lambert was more current (2008), consisting of a full review of materials and a single meeting of five hours' duration. Dr. Lambert admitted to Dr. B that he lied to the College in 2002, but blamed his lawyer for not giving him proper advice. He was unable to discuss the cascade of events leading to boundary violations, even though he had taken the Boundaries course. This led Dr. B (supported also by Dr. C and Dr. G) to conclude, in contrast to Dr. A, that Dr. Lambert's understanding of this fundamental issue was poor. Dr. B opined that boundary management, empathy and forthright self-disclosure were areas in need of monitoring. Further, it was clear to Dr. B that Dr. Lambert's insight was still limited, given that he ascribed his behaviour towards patients as due to weakness and vulnerability, and that he was "set up" by one patient. This thread of excuses, victimization and lack of empathy persists, and is supported by family members as noted in the reports of Dr. B and Dr. C.

Dr. C's report (January – February, 2009) of Dr. Lambert is the most current psychiatric assessment. Notably, Dr. Lambert discussed plans for future practice, including chaperones for female patients and identifying "red flags" or actions to avoid, such as making provocative remarks and working long hours. He appeared to have some insight into the nature of his difficulties and was able to voice remorse for his actions. However, he struggled to provide examples of improved insight, and of what he had learned in therapy, leading Dr. C to the impression that at least some of the reported improvement was superficial in nature. Dr. C's concern is that Dr. Lambert's own needs will dominate his professional practice. He will be at risk of acting out in times of stress, and his narcissistic personality can at best be managed—not cured.

The Committee concluded that Dr. Lambert has demonstrated some understanding of his responsibility for his misconduct; however, as emphasized by virtually all who have assessed him, he has continuing issues to be resolved. Factors which may lead to increased stress need to be addressed early, such as pressure to increase financial return while still achieving a healthy and balanced life. Deteriorating family/professional

relationships, legal entanglements and stresses related to medical practice need to be identified and both managed and monitored carefully. The fact that Dr. Lambert has issues that remain unresolved, given all the circumstances of this matter, constitutes a risk, but not an insuperable barrier to return to practice, provided that these issues are addressed through appropriate terms, conditions and limitations.

(f) Competency, skill and fitness to practise

In 2002, as part of an overall evaluation by Dr. K, Dr. Lambert was referred for detailed psychological testing with Dr. L. With respect to intelligence, the instruments used suggested functioning in the average range, below what would be expected by someone with Dr. Lambert's education. In 2007, Dr. A referred Dr. Lambert to Dr. D, whose report is included in the exhibits filed with the Committee. As part of Dr. D's assessment, a neuropsychological assessment was completed, which demonstrated a significant difference in Verbal and Performance IQ in favour of the former, and scores in the "defective" range for visual-spatial functioning. Specifically, in assessing executive function (planning, judgment and organization of behaviour), Dr. Lambert scored in the "impaired" range. Dr. Lambert reported having a long-term learning disorder. As his gross neurocognitive functioning appeared to be impaired, he was referred to Dr. E, a neurologist, and had an MRI and SPECT scan, both of which were normal (in 2007). The Committee had regard for Dr. D's summary, which described Dr. Lambert as an impulsive and perceptually disorganized individual whose executive functioning is impaired.

In 2009, Dr. Lambert was assessed by Dr. G, who concluded that Dr. Lambert's difficulties in executive functioning included: impulsive behaviour, difficulties in affect regulation and in interpersonal judgment, cognitive inflexibility, lack of accurate self-monitoring and self-appraisal and problems utilizing feedback. Most indicators suggested low-average abilities in this domain. His profile suggested strong acquisition and recall of knowledge with limitations in utilizing this information in a flexible manner, and

difficulties separating relevant from irrelevant information. Dr. G expressed the opinion that to be able to function adequately as a physician would require active compensation efforts which prove difficult when there are limitations in self-appraisal and use of feedback, such as in Dr. Lambert's case. He felt that this pattern was unlikely to change. Nonetheless, it was Dr. G's opinion that Dr. Lambert's cognitive profile is seen often with high-level professionals who have abused their authority. There was, in Dr. G's opinion, no reason to assume that his cognitive profile related to recent or acquired cognitive loss or the onset of a pathological process.

When tested for executive functioning, Dr. Lambert repeated assertions of flawless performance in the face of numerous errors. He believes he was a good physician who did good work. He stated to Dr. B that he has been actively involved in CME and requires no refresher treatment in order to practice effectively and safely. The Committee had concern with the consistent self-reporting of Dr. Lambert that he required no updating of medical knowledge even though he has been out of practice for eight years.

Dr. Lambert submitted a list of his professional reading and seminars that he has attended during the time he was away from practice. His list of individual journals reviewed consisted mainly of the CMA Journal and the Medical Post, with other selective journals of special interest. He has attended one to three symposia per year, and was booked to attend a Primary Care CME session in May, 2009. These efforts are minimal and do not inspire confidence.

The Committee determined that there were concerns with respect to competency in Dr. Lambert's anticipated return to practice. Given the lack of reliability in his self-evaluation, any assessment and monitoring should have an objective component with attention to the areas of known difficulty, *e.g.*, care planning, impulsiveness, and other executive functions.

(g) Competing interests/entrepreneurial activities

Dr. Lambert has been involved in entrepreneurial activities since 1994. The Committee understands that he has a skin care product line and a leasing business for laser hair removal equipment. He markets these products to spas, estheticians and salons. This is how he has supported himself during the years since revocation. Dr. Lambert has had boundary issues related to these activities in the past, with promoting and selling the skin care products to patients. In addition, he distributed his business cards to office staff when he was assessed by Dr. B (2008), reportedly attempted to sell skin care products to persons in Dr. K's office (2002), and attempted to do the same in a treatment group with Dr. J (subsequently acknowledged by Dr. Lambert to be a boundary violation). The Committee notes that in Dr. B's report there is reference (at pages 2 and 7) that Dr. Lambert is providing laser hair removal. In the report of Ms. F (a social worker who interviewed Dr. Lambert's current partner), she reported that according to Dr. Lambert's partner, when directly using the laser with a female patient, Dr. Lambert always has someone in the room with him. Dr. Lambert has also been involved in weight-loss clinics and had a stake in an "endermology" machine which he acknowledged was of no true benefit.

In view of Dr. Lambert's anticipation of returning to a high-income status and his demonstrated lack of appreciation of blurring of boundaries, there is a need to be clear about separation of patient-related activities from promotion/sales related to his other business ventures. Sales and promotion of business interests are not appropriate in the office setting. Exploitation of patients or their families for the purpose of business promotion/sales would be considered improper.

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In summary, the Committee has concluded, based on the above factors, that appropriate terms, conditions and limitations must be imposed on Dr. Lambert's certificate. These terms, conditions and limitations must be sufficient to attenuate the following risks:

- The risk that Dr. Lambert will act out sexually with vulnerable females;
- The risk that Dr. Lambert will engage in inappropriate behaviour, due to his unresolved issues;
- The risk that Dr. Lambert will not have a sufficient level of competency when he returns to practice; and
- The risk that Dr. Lambert will fail to observe appropriate boundaries in respect of his business ventures and patient care.

(iv) Risk factors and proposed management

Sexually acting out with vulnerable females

In respect of the risk of sexually acting out, the Committee considered the facts and circumstances regarding the findings of professional misconduct in 1991 and 2002. Violations involved a number of different patients and covered a number of years. The range of misconduct involved not only escalating sexual abuse, but exploitation of patients. Dr. Lambert has come to understand and partially take responsibility for his actions, but the Committee concluded that he had not yet taken full responsibility for his actions. Under these circumstances, the Committee concluded that he could not be safely trusted to see female patients.

The joint submission of the parties states that Dr. Lambert will only be permitted to treat adult male patients (over age 18). In order to ensure compliance, the College will be monitoring his OHIP billings and patient records, as well as attend at his practice locations. The Committee was satisfied that the terms proposed in this regard adequately protect the public. Since Dr. Lambert will be limited to treating adult male patients, there is no risk of his acting out with patients – he has no history of acting out with men. This is supported by the experts' opinions.

Unresolved issues

The psychiatric reports submitted are clear that Dr. Lambert has issues that will need to be addressed. These include boundary sensitivity, patient empathy, family relationships, achieving balance in his life, managing his narcissistic personality, and others as noted in discussion under sections (b), (c), (d) and (e), above. It is the opinion of all the assessing psychiatrists and psychologists that further work is necessary, especially with the expected stresses that will invariably occur on return to practice. Recognition of triggers and a plan for dealing with stressors would appear to be important. The Committee also notes that Dr. Lambert needs to gain a fuller understanding of professional ethics, including his responsibility to the College, the public, and the health care system.

The joint submission proposes that Dr. Lambert undertake to regularly attend a therapist acceptable to the College at least once every three months, with reports to go to the College every six months. This condition is the least onerous one which is still consistent with public safety and is acceptable to the Committee. However, the Committee hopes that in the early period of Dr. Lambert's return to practice and during times of increased stress, visits to the therapist will be more frequent. Further, the Committee will require that the therapy include attention to Dr. Lambert's cognitive deficits, especially those of executive functioning (planning, judgment and organization of behaviour) identified in the reports of Drs. D, C and G. Counsel have advised the Committee that their clients are agreeable to this added term.

The Committee had concerns regarding the honesty and reliability of Dr. Lambert's self-reporting of behaviour or conduct problems in the practice setting. The joint submission proposes that Dr. Lambert have a practice monitor whose obligations would include reporting any improper conduct or behaviour and any patient complaints immediately to the College. The Committee concluded that this term would provide added protection to the public.

In summary, the Committee was satisfied that the terms, conditions and limitations to be imposed provide adequate safeguards to protect against any risk to patients from Dr. Lambert's unresolved issues.

Competence

The concerns of the Committee regarding Dr. Lambert's competence relate to his length of time away from practice, his repeated assertions that he requires no refresher training, and his minimal CME. The Committee was also concerned about the reported cognitive deficits, impaired executive functioning, and lack of reliable self-reporting.

The Committee is of the opinion that the terms, conditions and limitations to be imposed on Dr. Lambert's certificate of registration must address the following:

- the need for an objective assessment of current competence;
- attention to cognitive deficits, especially those of executive functioning; and
- the need for a longitudinal assessment of performance.

The College has informed the Committee that the Quality Assurance Committee has a process of assessing members returning to practice. Furthermore, it has the discretion to impose terms, conditions, limitations, requirements and recommendations on a member who re-enters practice. If Dr. Lambert is permitted to re-enter practice, the Quality Assurance Committee will objectively assess Dr. Lambert's competence and take whatever steps it deems appropriate under the circumstances. Measures that the Quality Assurance Committee may employ may include (among others):

(a) specified continuing education or remediation programs;

(b) clinical supervision, including the observation of a member's practice and interactions with patients;

(c) practice assessments;

(d) the employment of a preceptor to evaluate and report on the member's progress and make recommendations for improvement;

(e) directing the Registrar to impose terms, conditions or limitations on the member's certificate of registration; and

(f) where appropriate, the referral of concerns about the member to the Inquiries, Complaints and Reports Committee.

The joint submission proposes that Dr. Lambert will abide by the terms, conditions and limitations and requirements or recommendations of the Quality Assurance Committee upon his re-entry to practice. The Committee is satisfied that the Quality Assurance Committee will objectively assess his competence. The joint submission further proposes that Dr. Lambert will practise under the supervision of a practice monitor acceptable to the College who will undertake regular reporting to the College. The degree of supervision must be acceptable to the College and/or as dictated by his re-entry to practice program. This is also satisfactory to the Committee.

It was the view of the Committee that the proposed order was satisfactory in respect of concerns regarding competence, subject to the following. As noted above, the Committee was of the view that Dr. Lambert should be required to undergo a longitudinal assessment of his performance. This was as per the recommendation of Dr. C that it would be prudent to have further ongoing regular re-evaluation of Dr. Lambert's cognitive status, so as to assist in understanding whether his cognitive deficits are progressing or are relatively stable. Counsel for Dr. Lambert has advised the Committee in a letter that Dr. Lambert is agreeable to undertaking a further review of his cognitive status. The Committee will make it an additional term, condition and limitation on Dr. Lambert's certificate of registration that he undertake such a review no later than one year after he is reinstated, with further annual reviews thereafter if the assessor determines it to be advisable.

The Committee will also require that Dr. Lambert's practice monitor pay attention to Dr. Lambert's cognitive deficits as referred to in the reports of Drs. D, C and G. The parties have advised the Committee through their counsel that they agree to this.

Business ventures and patient care

The Committee was concerned that there be a maintenance of boundaries between Dr. Lambert's business ventures and his clinical practice. The joint submission is clear in requiring compliance with the College's Conflict of Interest Policy. Furthermore, the requirement that Dr. Lambert shall only see patients within the context of services listed on OHIP's Schedule of Benefits with the noted exceptions is straightforward. However, the Committee felt that given Dr. Lambert's lack of appreciation of blurring of boundaries, it was important that there be a complete separation between his patient-related activities and his business activities. The Committee therefore will make it an additional term, condition and limitation of Dr. Lambert's certificate of registration that he be precluded from any dealings with patients or members of patients' families in respect of the sale of skin care products. The parties have advised the Committee through their counsel that they agree to this.

(v) Conclusion

In summary, the Committee concluded that Dr. Lambert had discharged the burden of proof on an application for reinstatement. The Committee is satisfied that the public will be protected if Dr. Lambert returns to practice with the terms, conditions and limitations proposed in the joint submission, along with the additional terms, conditions and limitations referred to herein. The Committee believes that it is both in the public interest, and fair to Dr. Lambert, to permit him the opportunity to return to the practice of medicine subject to these terms, conditions and limitations. The Committee notes that a return to practice is supported by assessing psychiatrists, albeit with some conditions. Dr. Lambert was not viewed to be a predator, and has had no problems with alcohol, drugs or criminal activity.

The Committee hopes that Dr. Lambert will learn to live with a healthy balance in his life, and refocus on patients' needs rather than his own. Any contravention of the terms, conditions and limitations being imposed on his certificate should be followed by serious and severe consequences.

Dr. Lambert has agreed to reimburse the College in the amount of $4,230 to compensate the College for its costs under s. 85.7(12) of the Code. The parties have confirmed to the Committee that the costs related to assessment and monitoring as set out in the following Order will be assumed by Dr. Lambert.

ORDER

Therefore, the Discipline Committee orders and directs as follows:

1. THE DISCIPLINE COMMITTEE ORDERS the reinstatement of Dr. Lambert's certificate of registration and directs the Registrar to impose the following terms, conditions and limitations on Dr. Lambert's certificate of registration:

    (i) Dr. Lambert will only be permitted to treat adult male patients. Dr. Lambert is not permitted to treat female patients, or male patients under the age of 18. The College will be entitled to monitor Dr. Lambert's OHIP billings and patient records as well as attend at Dr. Lambert's practice location(s) to ensure that he is complying with this term of his certificate of registration;

    (ii) Dr. Lambert shall undertake to regularly attend a therapist acceptable to the College and no less frequently than once every three months. The therapy must include attention to Dr. Lambert's cognitive deficits, especially those of executive functioning (planning, judgment and

organization of behaviour). The therapist shall submit reports to the College every six months. Those reports shall include all information relevant to Dr. Lambert's fitness and/or capacity to practise medicine. Additionally, if the therapist forms an opinion that Dr. Lambert's continued practice poses a risk of harm to patients or to the public, the therapist shall report that information to the College immediately;

(iii) Dr. Lambert shall practise under the supervision of a practice monitor acceptable to the College who shall provide an undertaking to the College to act as a practice monitor to Dr. Lambert, including:

i. Submitting reports to the College every three months for the first two years and every six months thereafter, which shall contain all information the monitor may believe will assist the College in monitoring Dr. Lambert's conduct and behaviour; and

ii. If the monitor is of the opinion that Dr. Lambert's behaviour or conduct is in any way improper or poses a risk to public or patient safety or if any patient or individual expresses any concern, complaint, protest or dissatisfaction regarding their treatment or the behaviour or conduct of Dr. Lambert, the monitor shall immediately report that conduct to the College.

(iv) The supervision would involve regularly scheduled chart reviews and meetings between Dr. Lambert and his practice monitor. The frequency and format of these

meetings must be acceptable to the College and/or as dictated by Dr. Lambert's re-entry into the practice of medicine program. The supervision would also involve the practice monitor paying attention to Dr. Lambert's cognitive deficits, especially those of executive functioning (planning, judgment and organization of behaviour);

(v) Dr. Lambert shall abide by any terms, conditions and limitations and requirements or recommendations required by the Quality Assurance Committee upon his re-entry into the practice of medicine. He shall also undergo a further review of his cognitive status, at his expense, by an assessor who is acceptable to the College, which review shall take place no later than one year after he re-enters practice. Any further reviews shall take place only if the assessor determines that such a review is advisable, and shall be limited to one per year. The reports of the assessor shall be provided to the College;

(vi) Dr. Lambert shall pay the College the sum of $4,230.00 within 30 days of the date of this Order;

(vii) Dr. Lambert shall remain in compliance with the College's Conflict of Interest policy in respect of any sale of skin care products to his patients. He shall be precluded from any dealings with patients or members of patients' families in respect of the sale of skin care products;

(viii) Dr. Lambert shall only see patients within the context of services listed on OHIP's Schedule of Benefits, with the following exception:

i. Dr. Lambert may work as a surgical assistant, under the direct supervision of a licensed surgeon in the Shouldice Hospital;

ii. Dr. Lambert may only assist in surgeries on adult male patients and may only attend with these patients in the operating room in the presence of a licensed surgeon; and

iii. Dr. Lambert may only practice at the Shouldice Hospital under the supervision of a monitor who is acceptable to the College and who will execute an undertaking which will include ensuring compliance with the terms set out above.

2. THE DISCIPLINE COMMITTEE DIRECTS the results of this proceeding to be included on the register.