

## **NOTICE OF PUBLICATION BAN**

In the College of Physicians and Surgeons of Ontario and Dr. Judi Dianne Marcin, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of patients identified in this proceeding or any information that could disclose the identity of these patients under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

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

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

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

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

Indexed as: **Ontario (College of Physicians and Surgeons of Ontario) v. Marcin, 2016  
ONCPSD 7**

**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. JUDI DIANNE MARCIN**

**PANEL MEMBERS:**

**DR. E. STANTON (CHAIR)**  
**MR. A. RONALD**  
**DR. P. CHART**  
**DR. E. ATTIA**  
**DR. S. YOUNG**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF  
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**MR. B. SELLS**

## **PUBLICATION BAN**

**Hearing Dates:** January 13 and February 29,  
2016  
**Decision Date:** March 30, 2016  
**Release of Written Reasons:** March 30, 2016

**Penalty Hearing Date:** July 7, 2016  
**Penalty Decision Date:** July 7, 2016  
**Release of Written Reasons on Penalty:** July  
28, 2016

## DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on January 13 and February 29, 2016. At the conclusion of the hearing, the Committee reserved its finding.

### THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Judi Dianne Marcin, a member of this College, has committed an act of professional misconduct:

1. under clause 51(1)(a) of the Health Professions Procedural Code (“the Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that she has been found guilty of an offence that is relevant to her suitability to practice;
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that she engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional;
3. under paragraph 1 (1)34 of O. Reg. 856/93, in that she has engaged in conduct unbecoming a physician;
4. under paragraph 1 (1)2 of O. Reg. 856/93, in that she failed to maintain the standard of practice of the profession; and
5. under paragraph 1 (1) 1 of O. Reg. 856/93 in that she contravened a term, condition or limitation on a member’s certificate of registration.

The Notice of Hearing also alleged that Dr. Marcin is incompetent as defined by subsection 52 (1) of the Code.

**RESPONSE TO THE ALLEGATIONS**

Dr. Marcin admitted the facts as set out in the Statement of Agreed Facts and that these facts constitute professional misconduct as alleged in the Notice of Hearing, except for the allegations in paragraphs 2(a) and 2(b) of Schedule “A” in the Notice of Hearing.

Dr. Marcin initially denied the following allegations:

2(a) Dr. Marcin engaged in disgraceful, dishonourable or unprofessional conduct in her record keeping practices, including by creating inaccurate and/or false patient records and correspondence.

2(b) Dr. Marcin engaged in disgraceful, dishonourable or unprofessional conduct in her dealings with the College during its investigation, including by engaging in the conduct described above in paragraph 2(a).

On February 29, 2016, Dr. Marcin changed her plea regarding 2(a) and 2(b) to a plea of no contest.

Rule 3.02(1) of the Rules of the Discipline Committee states that when a member enters a plea of no contest, the member consents to the following:

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

## **THE FACTS**

On the first day of the hearing, January 13, 2016, the College entered three volumes of documents into evidence entitled “Statement of Agreed Facts” (Exhibit 2). These three volumes consisted of a Statement of Agreed Facts and 28 indexed supporting documents.

On February 29, 2016, a Statement of Agreed Facts (corrected for minor typographical errors) was filed as Exhibit 2A. In addition, a Statement of Facts and a Plea of No Contest was filed (Exhibit 4).

No witnesses testified at the hearing.

### **I. STATEMENT OF AGREED FACTS**

The Statement of Agreed Facts is excerpted below:

#### **A. CRIMINAL CONVICTION FOR FRAUD**

1. On March 28, 2011, Dr. Marcin was charged with defrauding the Ministry of Health and Long Term Care (“MHLTC”) contrary to section 380 of the Criminal Code for billing for services not provided between: April 1, 2007 and August 23, 2009; August 24 and August 27, 2009; and, August 28, 2009 and March 24, 2011.
2. On March 22, 2012, Dr. Marcin pled guilty and was convicted of the charge that, between January 1, 2009 and January 31, 2011, at a city and elsewhere in the Province of Ontario, she did by deceit, falsehood or other fraudulent means, defraud the MHLTC a sum exceeding \$5,000 contrary to section 380(1)(a) of the Criminal Code. She was convicted of defrauding MHLTC a total amount of \$100,356.60. An excerpt from the Transcript of Proceedings at the Guilty Plea is attached at Tab 1 to the Statement of Agreed Facts.
3. In a Statement of Agreed Facts filed in the criminal court, Dr. Marcin acknowledged multiple occasions in which she billed for services during specified

periods which she did not in fact provide during those periods. A copy of the Statement of Agreed Facts is attached at Tab 2 to the Statement of Agreed Facts.

4. Dr. Marcin admits the facts as set out in Tab 2 attached to the Statement of Agreed Facts.
5. Following a joint proposal for disposition, Dr. Marcin received a suspended sentence and 18 months' probation. She was ordered to perform 100 hours of community service and to make restitution in the amount of \$100,356.60 by the end of the probationary period. A copy of the conviction and Probation Order is attached at Tab 3 to the Statement of Agreed Facts.

**B. DISGRACEFUL DISHONOURABLE AND UNPROFESSIONAL CONDUCT REGARDING RELATIONSHIP WITH PATIENT A**

**(a) The College Receives a Report from the Police re Patient A**

6. In the course of the criminal investigation regarding OHIP fraud, while executing a search warrant upon Dr. Marcin's home on March 30, 2011, police retrieved a number of documents related to one of Dr. Marcin's patients, Patient A. An envelope containing a card and CD was opened by the OPP and was seized along with a series of letters and photos, all of which are attached at Tab 4 of the Statement of Agreed Facts.
7. The materials included letters from Patient A in which he refers to Dr. Marcin as "my dearest and sweetest." Patient A described "four beautiful days" away with Dr. Marcin in 2010 at a particular hotel, Hotel Z, and referred to "making love to [Dr. Marcin] orally" and her reciprocating oral sex. He describes how their professional relationship turned into a romantic relationship, and how she asked him to go away with her. He described how he loved her deeply as his future bride. The letters refer to email communications between the two, and requests that she delete all previous emails and communicate through a shared email account with a shared password. The materials seized also contained photographs of Patient A and Dr. Marcin at Hotel Z and a card entitled "Love Forever".

8. These letters, cards, notes and photos were found in various places in Dr. Marcin's home including loose in her bedroom and on the dining room table. The police also seized an Application for Special Diet Allowance for Patient A from her home executed August 2010. These documents were not contained in a patient file.
9. Upon retrieving this material, Detective Constable Y reported what she had found to the College and the College commenced an Investigation.

**(b) Patient A Becomes Dr. Marcin's Patient**

10. Patient A is not employed. His last regular employment was about 20 years ago. He subsequently obtained work through a temporary staffing agency until 15 years ago. He is single. He has been receiving benefits through the Ontario Disability Support Program ("ODSP") since he stopped obtaining work through the temporary staffing agency. His applications for ODSP have been supported by Dr. Marcin.
11. Patient A spoke with the College regarding his interactions with Dr. Marcin. Copies of these statements and memos from the Investigator are attached at Tab 5 of the Statement of Agreed Facts. These statements are summarized in paragraphs 12-19, 21, 23-24 and 33-53 below.
12. Patient A became Dr. Marcin's patient in 2002. He was referred to her by a counsellor at a residential treatment center ("Residential Treatment Center B") where he had been receiving treatment for addiction. He had been struggling with substance abuse and was in recovery at the time he became Dr. Marcin's patient.
13. Dr. Marcin was his family doctor as well as his therapist. He understood she was a psychiatrist/psychologist, an addiction specialist and a regular doctor. Dr. Marcin was his only physician between 2002 and 2010.
14. Dr. Marcin provided Patient A psychotherapy. She diagnosed him with depression, and prescribed him anti-depressants. They met weekly, usually on

Tuesdays, and sometimes, more frequently than weekly. They always met on weekdays.

15. Patient A confided deeply in Dr. Marcin. He disclosed to her aspects of his childhood and that he had been sexually abused. He had a difficult past and he disclosed this to Dr. Marcin. He and Dr. Marcin hugged “hello” and “goodbye” at appointments.
16. After moving out of Residential Treatment Center B in around 2002, Patient A moved in with another resident of the Center with whom he was romantically involved, Ms. X. In roughly 2009, difficulties in the relationship emerged. Patient A discussed these problems with Dr. Marcin. Dr. Marcin offered to provide couples therapy. Patient A states that Ms. X declined, telling him that she thought Dr. Marcin would side with Patient A.
17. Patient A was aware that Dr. Marcin had a teenage child who drove a truck, whom he met briefly on occasion. He was aware she travelled to Hawaii on vacation with her parents. She was not married as far as he knew.

**(c) Patient A Develops Romantic Feelings for Dr. Marcin**

18. In early 2010, Patient A’s relationship with Ms. X was very strained. There was a significant breach of trust, involving Ms. X using his credit card and not telling him, and abusing substances among other problems. Patient A decided to leave Ms. X and discussed this with Dr. Marcin.
19. At around the same time, Patient A began to view Dr. Marcin differently. He developed romantic feelings for Dr. Marcin. He was scared to tell her because he thought it would ruin their doctor-patient relationship. However, the feelings persisted and he told her in around March 2010. Patient A states that Dr. Marcin explained to him that they would talk it through and his romantic feelings were not for her personally but for an ideal of someone like her. Patient A related his feelings to what he had seen on the TV program “The Sopranos”.



**(d) Communication Outside the Office**

20. Phone records obtained demonstrate calls between Patient A and Dr. Marcin commencing in April 2010, while Dr. Marcin was providing care to Patient A.
21. On a date in April 2010, at 3:51 p.m. and 4:09 p.m., Patient A placed calls to Dr. Marcin's cell phone which were each one minute in duration. Patient A does not recall any aspect of these calls.
22. On a date in May 2010, at 12:03 p.m., Dr. Marcin placed a call on her cell phone to Patient A's home phone which was one minute in duration.
23. On a date later on in May 2010, at 3:00 p.m., Dr. Marcin placed a call on her cell phone to Patient A's home phone which was 61 minutes in duration. Patient A does not recall the call.
24. On a date in June 2010, at 3:05 and 3:07 p.m., Patient A placed calls to Dr. Marcin's cell phone which were each one minute in duration. Patient A does not recall any aspect of these calls.
25. On a date in July 2010, Dr. Marcin placed a call from her cell phone to Patient A's home phone which was two minutes in duration.
26. On a date later on in July, 2010, at 3:44 p.m. and 3:45 p.m., Patient A placed calls to Dr. Marcin's cell phone which were each one minute in duration.
27. On a date in August 2010, at 5:46 p.m. and 6:36 p.m., Patient A placed calls to Dr. Marcin's cell phone which were each one minute in duration.
28. On a date later on in August 2010, at 5:18 p.m., Patient A placed a call to Dr. Marcin's cell phone which was one minute in duration.
29. On another date later in August 2010, at 5:19 p.m., Dr. Marcin placed a called to Patient A's cell phone which was one minute in duration.

30. On a further date in August 2010, at 8:58 a.m., 9:01 a.m., 9:04 a.m., and 9:08 a.m., Patient A placed calls to Dr. Marcin's cell phone which were each one minute in duration.
31. Copies of the phone records described above are attached at Tab 6 of the Statement of Agreed Facts.

**(e) Hotel Z**

32. In August 2010, Dr. Marcin booked a chalet at Hotel Z in a town in Ontario for a subsequent date in August, 2010. The proprietor of Hotel Z reviewed the records from the booking during the College's Investigation and advised the College that the reservation was made for two adults in Room #1. Room #1 is a separate accommodation with special features. According to the proprietor, it is the best accommodation on the property.

**(f) Patient A's Account of Hotel Z**

33. Patient A described to the College the circumstances of the visit to Hotel Z as set out below.
34. In the summer of 2010, Dr. Marcin informed Patient A that she would be vacationing in a vacation area in Ontario. He understood that she was going to be vacationing alone.
35. Patient A, motivated by his romantic feelings for Dr. Marcin, concocted a story about his substance abuse sponsor heading to a retreat in the same area and explained that, if Dr. Marcin could give him a ride, he would be able to meet and stay with his sponsor at a retreat.
36. Dr. Marcin agreed to let Patient A accompany her on her trip to Hotel Z where it was planned that he would later be picked up by his sponsor.

37. Patient A formulated his plan with the intention of using his time with Dr. Marcin, outside of the “doctor-client” setting, to demonstrate that his feelings for her were real and to hopefully have her realize that she had feelings for him.
38. The morning of a particular date in August 2010, Dr. Marcin called Patient A’s home phone at 8:19 a.m., 8:20 am, and 8:33 a.m., which were each one minute in duration. Phone records are attached at Tab 7 of the Statement of Agreed Facts.
39. Dr. Marcin picked up Patient A at his home. Patient A does not recall much about the drive.
40. Dr. Marcin checked in at Hotel Z at 2:24 p.m. that day.
41. Patient A stated they arrived around dinner time. He waited by the car while Dr. Marcin checked in and assisted Dr. Marcin with bringing her bags to Room #1.
42. Dr. Marcin and Patient A accompanied one another to dinner, biding time until Patient A was purportedly to be picked up by his sponsor. At or around that time, Patient A revealed to Dr. Marcin that he had concocted the entire sponsor story to be alone with Dr. Marcin out of the practice setting in an attempt to initiate a romantic relationship with her.
43. Dr. Marcin expressed her disappointment with Patient A for misleading her. She told Patient A that she was hurt that he had lied to her. She told him she could not trust him anymore, that he had crossed the line, that he made her vulnerable and she had to fire him as her patient.
44. Patient A states they were out in the middle of nowhere and that, to his knowledge, there was no bus station around. He did not know how many miles they were to the closest town. It was 7:00 p.m. and it was too late to try to go anywhere.
45. On another date in August, 2010, at 7:48 p.m., Patient A placed a call to Dr. Marcin’s cell phone which was one minute in duration.

46. Patient A states that they decided to make the best of it.
47. Dr. Marcin permitted Patient A to sleep on the floor of her room.
48. Patient stayed with Dr. Marcin in Room #1 at Hotel Z for the duration of the vacation. He left with her on a later date in August 2010.
49. While away, the two went shopping in a nearby town, they went to a coffee shop 40 minutes away, they sat outside of Room #1, they ate each meal together, took pictures and engaged in other activities.
50. Dr. Marcin paid for the expenses of the weekend. Patient A had no money.
51. Patient A denies any sexual activity occurred between him and Dr. Marcin. He states the sexual content referred to in the letters that he wrote to Dr. Marcin, seized by the Police, was all “fantasy” and his imagination.
52. Patient A feels responsible for the trouble he has caused. He tricked Dr. Marcin into taking him up there.
53. Patient A states he did not pay for gas.

**(g) Location of Hotel Z**

54. Hotel Z is located 10 km from a city Ontario. A bus runs daily from a nearby city with a departure at 9:00 a.m. In 2010, there were also buses from neighbouring cities four times a day, and a train departing from a nearby city daily.
55. In 2010, there were 20 suites at Hotel Z. In 2010, there were about 20 hotels in the surrounding area.
56. On the dates in August when Dr. Marcin and Patient A stayed at Hotel Z, there were vacancies at Hotel Z: a single occupancy room with a king size bed, a two bedroom room, and a one bedroom room.

57. The weather on the date in August, 2010 when Dr. Marcin and Patient A traveled to Hotel Z included rain. The weather on the remainder of dates they were there was clear.

**(h) Psychotherapy Ends**

58. Patient A states he received no further psychotherapy from Dr. Marcin following their weekend at Hotel Z. On the drive home from Hotel Z, Dr. Marcin told Patient A he should not see her as his doctor.
59. Patient A did not have a family physician or other treating physician after August 2010. He recalls attending Dr. Marcin's office a couple of times to obtain prescriptions and to get ODSP forms and other forms completed. Dr. Marcin continued to fill his prescriptions.
60. A patient file obtained from Dr. Marcin in the Investigation contained:
- A copy of one page of an Application for Special Diet Allowance executed by Dr. Marcin in August, 2011
  - A refill authorization request completed by Dr. Marcin in May 2011, re: Atorvastatin Calcium
  - Prescription for antidepressant dated March 2011, with 6 repeats and June 2011 with 6 repeats.

61. Patient A did not receive counselling from any other physician or therapist in 2010 and 2011 after Dr. Marcin ended their doctor patient relationship.

**(i) Ongoing Communication**

62. Cellular phone records show calls between Dr. Marcin and Patient A after their stay Hotel Z in August 2010 as follows:

DATE	DESCRIPTION
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First date in September 2010	Three calls from Patient A to Dr. Marcin, each for one minute in duration
Second date in September 2010	One call from Dr. Marcin to Patient A, for six minutes in duration
Ten-day span in September 2010	78 calls from Patient A to Dr. Marcin, each one minute in duration
Further date in September 2010	One call from Dr. Marcin to Patient A, for one minute in duration
Another date in September 2010	One call from Patient A to Dr. Marcin, for one minute in duration
First date in February 2011	One call from Patient A to Dr. Marcin, for one minute in duration
Second date in February 2011	One call from Patient A to Dr. Marcin, for ten minutes in duration

63. Cellular phone records show Patient A texted Dr. Marcin between November 2010 and January 2011.

64. Phone records are attached at Tab 8 of the Statement of Agreed Facts.

**(j) Forensic Analysis of Dr. Marcin’s Laptop Computers**

65. The College retained Mr. C, a certified information systems security expert, fraud examiner, and security auditor, to analyze Dr. Marcin’s computers to obtain evidence of communication between Patient A and Dr. Marcin.

66. Mr. C determined that in May 2010, a “url” or shortcut was created in the documents folder of the user “Judy” on one of Dr. Marcin’s laptops. The shortcut was for the shared Gmail account Patient A described in his letters to Dr. Marcin. Patient A had indicated in his letters that Dr. Marcin and Patient A could prepare emails in the account and leave them in the draft folder as a way of communicating without actually sending an email.

67. Mr. C recovered from unallocated space the following emails and email fragments which had previously been deleted from Dr. Marcin’s computer. These

were all the emails and email fragments which were able to be recovered. Copies of the recovered emails and email fragments are attached at Tab 9 of the Statement of Agreed Facts. These communications were not contained in the patient record.

Date	To/From	Re	Content
October 2010	From [Patient A] @email.com to judy_marcin@email.com	It's quite Long. No, not that....	Recovered
November 2010	From [Patient A]@email.com to (pet name for Judi Marcin)	Please Read.....	Recovered
December 2010	From [Patient A]@email.com to (pet name for Judi Marcin)	Parcel at Can Post	NOT RECOVERED
January 2010	From [Patient A]@email.com	Hello Sweetheart	NOT RECOVERED
January 2011	From [Patient A]@email.com	In His Time according to His Will	NOT RECOVERED
January 2011	From [Patient A]@email.com to judy_marcin@email.com	Today only! Think big and take 25% off	NOT RECOVERED
January 2011	From [Patient A]@email.com to (pet name for Judi Marcin)	Need to Talk	NOT RECOVERED
January 2011	From [Patient A]@email.com to (pet name for Judi Marcin)	Just in Case	NOT RECOVERED
January 2011	From [Patient A]@email.com to (pet name for Judi Marcin)	Remember the deal?	NOT RECOVERED
January 2011	From [Patient A]@email.com to (pet name for Judi Marcin)	Is communication important to you?	NOT RECOVERED
January 2011	From [Patient A]@email.com	Shock CBC yesterday	NOT RECOVERED

	to undisclosed recipients	morning	
January 2011	From [Patient A]@email.com to (pet name for Judi Marcin)	Good judge of character?	NOT RECOVERED

**(k) Other Evidence Obtained in the Investigation:**

68. In the course of the College investigation, the College Investigator obtained records from Dr. Marcin in respect of Patient A, some of which had been previously obtained by the police. Among the documents was a completed Application for Special Diet Allowance dated July 2010, and executed by Dr. Marcin in August 2010. Attached was note from Patient A stating:

Judi, For your reference, this is my copy of the most recent diet form from July 2010 that you filled out. The new forms and instructions are all inside the return envelope. Please double check them. Also please make sure to put the same date that you put in the front beside my signature on the inside. I filled out my info on the front. Then please drop in the mail, Thanks [Patient A]. Ps. Please go to [the shared email address] to read my last message until August. Also, could you please call in 12 repeats for my meds. I would also like if we could get together once more to express our love for each other before we put this on hold til Aug. Love you lots, [pet name for Patient A].

A copy of this form with the attached note is attached at Tab 10 of the Statement of Agreed Facts.

**C. DISGRACEFUL, DISHONOURABLE AND UNPROFESSIONAL CONDUCT RE PATIENT A'S RECORDS**

69. OHIP Code K007A is a billing code associated with the provision of individual psychotherapy. It is billed in units of a half hour, and requires direct contact with



the patient in person for a minimum of 20 minutes for 1 unit, 46 minutes for two units and 76 minutes for 3 units.

70. On numerous occasions, Dr. Marcin billed for OHIP under Code K007A for individual psychotherapy for Patient A for which there are no corresponding patient notes. This includes billing for services in August 2010 while she was with Patient A at Hotel Z. Examples include:

### **2009**

One date in February

Two dates in March

Three dates in April

One date in June

Three dates in July

Five dates in August

Four dates in September

Two dates in October

Four dates in November

Two dates in December

### **2010**

Ten dates in January

Six dates in February

Three dates in March

Seven dates in April

Four dates in May

Six dates in June

Six dates in July

Eight dates in August

Eight dates in September

### **2011**

Two dates in January

Three dates in February

Two dates in April

One date in May

71. Dr. Marcin billed OHIP under Code K007A for individual psychotherapy provided to Patient A for therapy provided on Saturday in 2010, including the Saturday before and after she went to Hotel Z with Patient A.

72. Some examples of the provision of billing for psychotherapy on Saturday include:

**2010**

Four dates in January

Four dates in February

Four dates in March

Three dates in April

Five dates in May

Four dates in June

Five dates in July

Four dates in August

Three dates in September

73. The occasions in which Dr. Marcin billed for psychotherapy over the weekend commencing in 2007 are attached at Tab 11 of the Statement of Agreed Facts.
74. Patient A states he did not receive psychotherapy from Dr. Marcin on the weekend.
75. Dr. Marcin billed OHIP under Code K007A for individual psychotherapy provided to Patient A after August 2010, on 22 occasions. No psychotherapy was provided after that time.

76. A copy of Patient A's patient records are attached at Tab 12 of the Statement of Agreed Facts.
77. A copy of Patient A's OHIP records are attached at Tab 13 of the Statement of Agreed Facts.
78. Identical typed patient records appear with different handwritten dates throughout Dr. Marcin's chart. For example:

**2010**

Three dates in February

Three dates in March

One date in April

Three dates in May

Four dates in July

One date in August

**2009**

Two dates in January

Four dates in May

Six dates in June

Eight dates in July

Eight dates in August

12 dates in September

Nine dates in October

Eight dates in November

One date in December

79. Copies of the duplicated chart notes are attached at Tab 14 of the Statement of Agreed Facts.
80. On December 18, 2012, Dr. Marcin provided the College with a copy of her chart for Patient A. It contained a termination letter addressed to Patient A dated November 2010. This letter does not appear in the chart seized by the Police in the criminal investigation on March 30, 2011.
81. Dr. Marcin maintained two appointment books in her office that, at certain times in 2010 and 2011, contained discrepancies as between them.

**D. FAILING TO MAINTAIN THE STANDARD OF PRACTICE, INCOMPETENCE, AND DISGRACEFUL, DISHONOURABLE AND UNPROFESSIONAL CONDUCT RE: PRESCRIBING**

82. On February 11, 2013, the Inquiries, Complaints and Reports Committee imposed terms on Dr. Marcin's certificate of registration, ordering that she retain a Health Monitor to requisition random bi-monthly urine drug screens and hair follicle testing.
83. On October 21, 2013, the Inquires, Complaints and Reports Committee gave notice of its intention to vary that order. This was based on information that Dr. Marcin may be in breach of the Order.
84. On November 11, 2013, Dr. Marcin entered into an undertaking with the College, in which she agreed to cease to practice medicine in all jurisdictions (the "November 11 Undertaking"). A copy of the November 11 Undertaking is attached at Tab 15 of the Statement of Agreed Facts. No allegations of professional misconduct were referred to the Discipline Committee in respect of the potential breach.
85. Prior to entering into this November 11 Undertaking, between November 1 and November 11, 2013, Dr. Marcin issued 8 patients multiple prescriptions for narcotics.

86. The College retained an assessor, Dr. D, to opine on Dr. Marcin's prescribing of Narcotic Drugs, Narcotic Preparations, Controlled Drugs, Benzodiazepines/Other Targeted Substances, and all other Monitored Drugs between the period of November 1 to 11, 2013.
87. Dr. D opined that in 7 of charts she reviewed, Dr. Marcin failed to maintain the standard of practice of the profession. She was unable to comment on the 8th chart but did note that from the pharmacy records, Dr. Marcin prescribed HM Contin, Ritalin, Ratio-Codeine in amounts above the recommended morphine equivalent dose ("MED").
88. Further, Dr. D opined:
- Dr. Marcin displayed a lack of knowledge in that she prescribed high doses of often multiple opioids, both short and long acting and in some patients high doses of benzodiazepines in combination with those opioids. Dr. Marcin lacked knowledge for prescribing these highly addicting medications.
  - Dr. Marcin did not display proper skill in prescribing opioids/benzodiazepines in 4 of the patients in that she either wrote double prescriptions for the same medication on the same date and/or did not write a start date for the prescription to be filled, allowing for potential early refills.
  - Dr. Marcin displayed a lack of judgment:
    - (i) Dr. Marcin prescribed high doses of opioids and benzodiazepines, often in combination during this time period with refills for 4-6 months;
    - (ii) Dr. Marcin was aware that some of the patients had a history of addiction and /or criminal background and/or misuse.
    - (iii) Dr. Marcin did not establish routine addiction management:
      - 1. Lack of random urine testing
      - 2. Lack of narcotic/benzodiazepine contract

3. Lack of addiction risk management
  4. Lack of discussion re risk of addiction/withdrawal
- (iv) Dr. Marcin prescribed 3 early prescriptions for Fentanyl TDP to a patient who showed signs of addiction/misuse prior to the period of her absence.
  - (v) Dr. Marcin did not provide proper medical follow up/referral to a physician with knowledge of pain management/addiction management to cover the period of her absence
  - (vi) Dr. Marcin showed a disregard for other health care professionals, in this case, pharmacists. Pharmacists had expressed concern to Dr. Marcin regarding the risk of prescribing high doses opioids and/or benzodiazepines and in some patients a high dose of SSRI's in conjunction with these drugs, significantly increasing the risk of Serotonin Syndrome.
  - (vii) Dr. Marcin ought to have known that there was a high likelihood that these addicting medications would be sold/given to others, placing the public at large at risk
  - (viii) Dr. Marcin did not establish risk management for her patients in regards to driving/boating or using heavy equipment while taking these medications.
89. Ultimately, Dr. D concluded that Dr. Marcin exposed all of the reviewed patients to harm or injury by prescribing high doses of opioid/benzodiazepines at times in combination with other medications.
90. A copy of Dr. D's report is attached at Tab 16 of the Statement of Agreed Facts. A copy of Dr. D's addendum report received on December 16, 2015, together with a letter dated December 17, 2015 is attached at Tab 17 of the Statement of Agreed Facts. A copy of patient records she reviewed and pharmacy records are filed separately.

91. On November 7, 2013, Dr. Marcin wrote two prescriptions for Fentanyl 100 ug patch. One stated “Please dispense on April 1, 2014 for adhesive failure”. The other stated “please dispense on May 12, 2014 for adhesive failures”. These were prescribed to a patient with a known addiction history including previous IV drug use and cocaine. These prescriptions were in addition to prescriptions for fentanyl Dr. Marcin had already prescribed to this patient.
92. Dr. D noted that in this case the patient received prescriptions for the spring of 2014 of his ‘regular dose’ of 3 ½ patches every 48 hours plus 3 patches every 48 hours for adhesive failure, allowing almost a doubling of an already high doses of fentanyl. This would potentially have exposed the patient to extremely high doses of a very addicting drug, increasing the risk of overdose, abuse and diversion of the drugs,
93. Dr. Marcin was aware there was a high incidence of drug addiction in the location where she practiced.
94. Dr. D opined that Dr. Marcin ignored warnings and concerns by pharmacists regarding her prescriptions for high doses of opioids and benzodiazepines, often in combination with high doses of SSRI’s.

**E. BREACH OF MARCH 2014 UNDERTAKING AND CONTRAVENTION OF THE TERMS, CONDITIONS AND LIMITATIONS ON DR. MARCIN’S CERTIFICATE**

95. On March 26, 2014, Dr. Marcin entered into an undertaking with the College agreeing, among other things, to continue to cease to practice until the PHP and College were satisfied she could return to work (the “March 26 Undertaking”). A copy of the March 26 Undertaking is attached at Tab 18 of the Statement of Agreed Facts.
96. As part of the March 26 Undertaking, Dr. Marcin voluntarily resigned her prescribing privileges in relation to Narcotic Drugs, Narcotic Preparations, Controlled Drugs, Benzodiazepines/Other Targeted Substances, and all other Monitored Drugs (as such terms are known under the regulations and schedules of

the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, the *Food Drugs Act*, S.C. 1985, c. F-27, and the *Narcotic Safety Awareness Act*, S.O. 2010, c. 22.

97. Dr. Marcin undertook to not issue new prescriptions or renew existing prescriptions of Narcotic Drugs, Narcotic Preparations, Controlled Drugs, Benzodiazepines/Other Targeted Substances, and all other Monitored Drugs. She agreed that relinquishing prescribing was a term, condition and limitation on her certificate of registration.

**(a) Prescriptions for Tramadol etc.**

98. Dr. Marcin wrote 16 prescriptions for tramadol/zytram/ultram after March 26, 2014, commencing on May 2, 2014. Copies of the prescriptions are attached at Tab 19 of the Statement of Agreed Facts.
99. Tramadol/ultram/zytram are Monitored Drugs under the regulations to the *Narcotics Safety and Awareness Act*, 2010.

**(b) Prescription for Testosterone**

100. Dr. Marcin wrote a prescription for testosterone after March 26, 2014. Testosterone is a Controlled Drug under the regulations of the *Food and Drugs Act*. A copy of the prescriptions and patient chart are attached at Tab 20 of the Statement of Agreed Facts.

**(c) Prescriptions for Narcotics**

101. In September or October 2013, Dr. Marcin contacted Mr. E, pharmacist at a pharmacy in Ontario, where her patient, Patient F, filled her prescriptions. Dr. Marcin advised Mr. E that she would be away until March 2014 and wanted to know what medications Patient F would require until she returned.
102. Following this conversation, Dr. Marcin wrote prescriptions for Patient F, attached at Tab 21 of the Statement of Agreed Facts, as follows:
- November 8, 2013 Hydromorph Contin (24 mg) 90 tabs, 4 repeats
  - November 8, 2013 Morphine Sulphate (40mg) , 240 tabs , 4 repeats



- November 8, 2013 Fentanyl TDP, 15 TDP, 4 repeats
103. The Pharmacy partially filled the Hydromorph Contin, for example, on December 1, December 29, February 3 and March 3.
  104. On April 1, 2014, Mr. E of Walmart pharmacy faxed Dr. Marcin's office a request for prescription authorization for Morphine Sulphate, Hydromorphone HCL, and Fentanyl for patient Patient F as he no longer had any remaining medication under the November 8 prescriptions. A copy of the authorization request is attached at Tab 22 of the Statement of Agreed Facts. Dr. Marcin had previously told Mr. E to ensure this patient received her narcotics at the beginning of every month.
  105. Dr. Marcin's office received the fax on April 2, 2014.
  106. On April 6, 2014, Dr. Marcin's office faxed 3 prescriptions for Patient F, attached at Tab 23 of the Statement of Agreed Facts, as follows:
    - November 8, 2013 Hydromorph Contin (24 mg) 90 tabs, 1 repeat to be dispensed April 5 and May 4, 2014
    - November 8, 2013 Morphine Sulphate (40mg), 240 tabs , 1 repeat to be dispensed April 5 and May 4, 2014
    - November 8, 2013 100 meg TDP, 15 TDP, 1 repeat, to be dispensed April 5 and May 4, 2014
  107. When the prescriptions were faxed (April 6, 2014), Dr. Marcin was subject to a cease to practice undertaking and was prohibited from prescribing narcotics.
  108. The requesting pharmacist, Mr. E, was unclear about the third prescription which lacked the medication name. On April 7, 2014, he called Dr. Marcin's office, to request clarification. He was advised by her office that the prescription was for the fentanyl patch, and wrote v/o (verbal order) reflecting the order he was given over the phone. He was not aware of Dr. Marcin's practice restrictions at the time

of the request. After filling the April prescriptions, he learned of Dr. Marcin's restrictions. He did not fill the prescriptions for narcotics in May 2014.

109. There were no other physicians working in Dr. Marcin's office or with Dr. Marcin in any capacity.
110. On April 21, 2014, Dr. Marcin entered into an undertaking permitting her to return to practice on an incremental basis.

**F. BREACH OF DECEMBER 2014 UNDERTAKING**

**(a) The December 2014 Undertaking**

111. On or about May 31, 2011, the College commenced an investigation under section 75(1)(a) of the Health Professions Procedural Code into Dr. Marcin's standard of practice of the profession. On December 17, 2014, following the section 75(1)(a) Investigation, Dr. Marcin entered into a undertaking with the College. Dr. Marcin was represented by counsel in the investigation and in the negotiation of the undertaking. A copy of the Undertaking is attached at Tab 24 of the Statement of Agreed Facts (the "December 2014 Undertaking").
112. The December 2014 Undertaking requires, among other things, that Dr. Marcin practice under the guidance of a clinical supervisor who is acceptable to the College (the Psychotherapy Clinical Supervisor").
113. With respect to the supervision of her psychotherapy practice, she was initially required to:
  - (a) meet weekly with the supervisor to review no fewer than 5 patient records per week from her psychotherapy practice; and,
  - (b) be observed in her practice for a minimum of 3 hours per week, to be observed in no fewer than 3 complete patient encounters with patients to whom she is providing psychotherapy.

114. The December 2014 Undertaking required that Dr. Marcin provide a signed undertaking from an approved Psychotherapy Clinical Supervisor within 30 days of December 17, 2014 failing which she must cease practising psychotherapy until she obtains an approved supervisor.
115. The December 2014 Undertaking contemplated a step-down in psychotherapy supervision from weekly to bi-weekly, for a minimum of three months, if the supervisor indicates it is appropriate to do so and if approved by the College.
116. Other requirements in the December 2014 Undertaking include:
- Dr. Marcin shall develop a CPD Plan and have it approved by her supervisor;
  - Dr. Marcin shall successfully complete the first available Psychotherapy Certificate Program offered by Mount Sinai Hospital;
  - Dr. Marcin shall practice under the guidance of a clinical supervisor who shall supervise her family medicine practice and who shall review 15 patient records per month for patients for whom she has provided non-psychotherapeutic treatment.
117. Following the execution of the December 2014 Undertaking, the College reminded Dr. Marcin, through her counsel, of the obligations in the undertaking. She was reminded that the supervisor must be approved and the supervisor's signed undertaking received by the College by January 16, 2015 or Dr. Marcin must cease to practice. She was asked to submit a draft CPD plan by March 16, 2015. She was reminded that:

It is important that Dr. Marcin abide by all requirements of the Undertaking. Please note, if Dr. Marcin is not in compliance with any of these terms, she may be deemed to be in breach of the Undertaking and the College may take further action.

A copy of the letter from Ms. G, the College's Compliance Monitor, is attached at Tab 25 of the Statement of Agreed Facts.

118. To date, Dr. Marcin has not submitted a CPD Plan.
119. To date, Dr. Marcin has not applied for the Psychotherapy Certificate Program. She has completed the first part of a pre-requisite course to be eligible for the Certificate Program.

**(b) College Approval of Clinical Supervisor**

120. On January 16, 2015, the College approved Dr. H to act as both Dr. Marcin's Psychotherapy Clinical Supervisor and her Family Practice Clinical Supervisor. Dr. H's CV is attached at Tab 26 of the Statement of Agreed Facts.
121. Ms. G provided Dr. H and Dr. Marcin with a supervision package, including the Guidelines for College-Directed Supervision attached at Tab 27 of the Statement of Agreed Facts.

**(c) Meetings with the Clinical Supervisor**

122. On January 19, 2015, Dr. H spoke with Ms. G. No observation occurred during that week.
123. On February 18, 2015, Dr. H asked Ms. G if he needed to attend supervision that week. She advised Dr. H that the undertaking noted that they are required to meet once a week for observation. She stated that should there be a time when this might not occur, he should contact her in advance to discuss.
124. As set out in Dr. H's first and second reports to the College, received March 5 and 27, 2015, Dr. H supervised Dr. Marcin's psychotherapy practice as follows:

Date	Direct Observation- Number of Patients	Direct Observation- Hours	Chart Review
January 29, 2015	3 Patients	3 hours	5

<b>Date</b>	<b>Direct Observation- Number of Patients</b>	<b>Direct Observation- Hours</b>	<b>Chart Review</b>
February 5, 2015	3 patients	3 hours	5
February 12, 2015	2 patients (one patient cancelled)	2 hours	5
February 19, 2015	3 patients	3 hours	5
February 26, 2015	3 patients	Not specified	5
March 5, 2015	3 patients	Not specified	5
March 12, 2015	2 patients (one patient cancelled)	Not specified	5
March 19, 2015	3 patients	Not specified	5

125. Dr. H wrote in his first report: “....Dr. Marcin is clear with me that she is very willing and able to learn and adapt. She comes to this supervision process with a positive open learning attitude.”
126. Dr. H also recommended that Dr. Marcin cease practicing family medicine, in part because her office did not have the appropriate facilities to support a family practice, and in part because she was providing family medicine and psychotherapy to the same patients in the same visit which he viewed as incorrect and unacceptable boundary-wise. On April 9, 2015, Dr. Marcin entered into an undertaking to cease practising family medicine and to restrict her practice to psychotherapy.
127. Following receipt of these reports, Ms. G notified both Dr. H and Dr. Marcin that on two occasions only two patients were observed, and that the December 2014 Undertaking requires that no fewer than 3 complete patient encounters be observed each week. Dr. Marcin and Dr. H were advised by Ms. G that should a patient cancel, Dr. H would need to return to ensure that a third observation occur within that week. A copy of Ms. G’s letter to Dr. Marcin’s counsel, dated April 2, 2015, and a copy of Ms. G’s letter to Dr. H, dated April 2, 2015, is attached at Tab 28 of the Statement of Agreed Facts.

128. On April 17, 2015, Dr. H advised the College that Dr. Marcin missed two arranged sessions: one on April 2 and one on April 9, 2015. He advised the College that according to Dr. Marcin, the session on April 2 was missed due to an illness reported by Dr. Marcin as Colitis. He advised that the April 9 was missed because Dr. Marcin stated that she had insufficient funds to pay for supervision.
129. As set out in the third report, dated April 27, 2015 and received April 29, 2015, Dr. H supervised Dr. Marcin's practice as follows:

<b>Date</b>	<b>Direct Observation- Number of Patients</b>	<b>Direct Observation- Hours</b>	<b>Chart Review</b>
March 26, 2015	3 patients	Not specified	5
April 2, 2015	0	0	0
April 9, 2015	0	0	0
April 16, 2015	4 patients	Not specified	20
April 23, 2015	4 patients	Not specified–	25

130. Dr. H noted that “one or two of the direct observation sessions were not the full-length.”
131. In a letter dated April 27, 2015, and received April 29, 2015, Dr. H wrote the College recommending that supervision of Dr. Marcin be reduced to bi-weekly sessions. Dr. H further wrote:

I have been supervising Dr. Marcin once per week for 3 months. Unfortunately there were two days where we were unable to meet. Nevertheless on two other days I worked with Dr. Marcin for some additional time and two additional patient send [sic] reviewed substantial more charts on two occasions in order to try to make up for some of the lost time.

Some of the factors that have made somewhat difficult for us to meet are:

- It is difficult for me to get out of town, at times, because the traffic can be terrible and unpredictable.
- It is quite a distance from my Clinic to Dr. Marcin [sic] office

- April 2nd was missed due to an illness reported by Dr. Marcin, as Colitis
- April 9th was missed by Dr. Marcin due to insufficient funds.

I feel now that I have a very good sense by seeing Dr. Marcin with her several of patients[sic] and have, so far, seen her with eleven patients for this report (instead of required 12). If the CPSO feels we need to do more catching up, we are, of course, more than willing to catch up if the College believe [sic] we have not yet fully made up for the lost time.”

132. On May 6, 2015, Ms. G reminded Dr. H that he is required to observe patients for a minimum of three hours of psychotherapy per week and requested that he ensure he states the time he spent observing patient encounters in his reports.
133. As set out in the fourth report, received June 2, 2015, Dr. H supervised Dr. Marcin’s practice as follows:

<b>Date</b>	<b>Direct Observation- Number of Patients</b>	<b>Direct Observation- Hours</b>	<b>Chart Review</b>
April 30, 2015	0	0	0
May 8 <sup>th</sup> , 2015	2 patients 1 patient was a no-show	Only one hour specified	10
May 14 <sup>th</sup> , 2015	4 patients	Not specified	0
May 21, 2015	3 patients	Not specified	6
May 28, 2015	3 patients	Not specified - One patient arrived later, therefore only a partial session	6

134. Dr. H reported that the April 30, 2015 session was cancelled because Dr. Marcin reported to him that she had insufficient funds.
135. Dr. H noted in this report:

\* Note: The charts below may not have been reviewed in precisely the order given or on the date supplied, but all charts mentioned above have

been reviewed. The dates correspond to the scheduled meetings between myself and Dr. Marcin. Also, although April 30th was cancelled, Dr. Marcin and I still met for four sessions in the month of May, as required. It is also important to note that the traffic can be extremely heavy when attempting to reach Dr. Marcin's practice. Therefore, for one session I was a few minutes late and for other sessions some patients do not come. Dr. Marcin and myself have attempted to make up these unfortunate deficiencies by scheduling additional patients at following sessions, and by reviewing additional charts.

136. Dr. H noted that Dr. Marcin participated in four continuing professional development programs relating to psychotherapy that he recommended.
137. On June 8, 2015, the Inquiries, Complaints and Reports Committee considered Dr. H's reports and recommendation that supervision be reduced to every two weeks. The request was denied.
138. As set out in the fifth report, received July 3, 2015, Dr. H supervised Dr. Marcin's practice as follows:

<b>Date</b>	<b>Direct Observation- Number of Patients</b>	<b>Direct Observation- Hours</b>	<b>Chart Review</b>
June 4, 2015	3	3 hours	5
June 11, 2015	3	3.5 hours	5
June 18, 2015	4	4.5 hours	5
June 25, 2015	3	Approximately 3.5 hours	7

139. On July 13, 2015, Dr. H advised Ms. G that it may not be possible to meet Dr. Marcin every week in the summer because he has a previous long-standing teaching arrangement. Ms. G advised Dr. H and Dr. Marcin that Dr. Marcin propose an alternate supervisor or not see patients for the weeks Dr. H was unable to attend. Dr. H responded that he changed his schedule to supervise Dr. Marcin as required.
140. As set out in the sixth report, received August 4, 2015, Dr. H supervised Dr. Marcin's practice as follows:



<b>Date</b>	<b>Direct Observation- Number of Patients</b>	<b>Direct Observation- Hours</b>	<b>Chart Review</b>
July 16, 2015	4	3.75	5
July 23, 2015	3	3	5
July 30, 2015	3	3	8

141. There was no supervision (observation or chart review) the week of July 2 or the week of July 9. Dr. H stated in his report:

Nevertheless, I unfortunately had to miss our initial two sessions this month (July) as I had an unavoidably [sic] scheduled family engagement (which I had booked two years prior). I would like to emphasize, for Dr. Marcin's sake, that it was I who had to cancel those two sessions; and not Dr. Marcin. I have made considerable efforts to meet the College's guidelines and have seen additional patients and have reviewed some additional Medical Charts in order to attempt to make up for the meetings that were missed. Now that I fully understand the College's insistence of weekly sessions, no week will go by without supervision (unless the CPSO decreases this requirement).

142. As set out in the seventh report, received August 26, 2015, Dr. H supervised Dr. Marcin's practice as follows:

<b>Date</b>	<b>Direct Observation- Number of Patients</b>	<b>Direct Observation- Hours</b>	<b>Chart Review</b>
August 8, 2015	3	3 hours	5
August 13, 2015	3	2.75 hours	7
August 20, 2015	3	3 hours	5

143. On August 18, 2015, the ICRC approved that supervision be reduced from weekly to bi-weekly in accordance with the terms of the December 2014 Undertaking. From August 18, 2015, Dr. Marcin was required to meet with Dr. H every two weeks, to be observed in no fewer than 3 complete patient encounters, for no less than 3 hours and to have 5 charts reviewed.

144. There was no supervision (observation or chart review) the week of August 30, 2015.

145. As set out in the eighth report, received September 29, 2015, Dr. H supervised Dr. Marcin's practice as follows:

<b>Date</b>	<b>Direct Observation- Number of Patients</b>	<b>Direct Observation- Hours</b>	<b>Chart Review</b>
September 9, 2015	3	3 hours	5
September 17, 2015	3	3 hours	5

146. As set out in the ninth report, received October 21, 2015, Dr. H supervised Dr. Marcin's practice as follows:

<b>Date</b>	<b>Direct Observation- Number of Patients</b>	<b>Direct Observation- Hours</b>	<b>Chart Review</b>
October 1, 2015	3	1.5 hours	5
October 15, 2015	3	3 hours	5

147. As set out in the tenth report, received December 17, 2015 (one month late), Dr. H supervised Dr. Marcin's practice as follows:

<b>Date</b>	<b>Direct Observation- Number of Patients</b>	<b>Direct Observation- Hours</b>	<b>Chart Review</b>
October 22, 2015	3	2.75 hours	5
November 5, 2015	3	2.25 hours	7
November 19, 2015	3	1.5 hours	5

148. As set out in the eleventh report, received December 23, 2015, Dr. H supervised Dr. Marcin's practice as follows:

<b>Date</b>	<b>Direct Observation- Number of Patients</b>	<b>Direct Observation- Hours</b>	<b>Chart Review</b>
December 3, 2015	3	2 hours	5
December 17, 2015	3	2.5 hours	5

## **II. STATEMENT OF FACTS AND PLEA OF NO CONTEST**

A Statement of Facts and a Plea of No Contest was also filed as an exhibit and presented to the Committee. It is excerpted below:

### **PART I: FACTS**

#### **A. DISGRACEFUL, DISHONOURABLE OR UNPROFESSIONAL CONDUCT IN RECORD KEEPING AND IN THE COLLEGE INVESTIGATION**

##### **(a) The College's Investigation re Patient A**

1. On June 2, 2011, the College received notification from Detective Constable Y of the Ontario Provincial Police (the "OPP") that as a result of an unrelated investigation, the OPP obtained evidence indicating that Dr. Judi Marcin ("Dr. Marcin") had been involved in an inappropriate relationship with one of her patients.
2. On January 10, 2012, on the basis of this information, and other information obtained by the College, the Registrar formed reasonable and probable grounds that Dr. Marcin committed an act of professional misconduct. Investigators were appointed under section 75(1)(a) of the Health Professions Procedural Code on March 1, 2012.
3. On March 14, 2012, the College Investigator attended at Dr. Marcin's practice address. The College Investigator provided Dr. Marcin with a letter notifying her of the appointment of investigators and a copy of the appointment of investigators. The College Investigator requested that Dr. Marcin provide, among other things, the original patient chart for Patient A.
4. Dr. Marcin advised the College Investigator that Patient A's original chart was taken by the OPP during a search of Dr. Marcin's office on March 30, 2011.
5. Dr. Marcin provided the College Investigator with the records of Patient A that she stated she still had in her possession after the police search, namely, a file

folder labelled “Patient A 2010”, a copy of which is attached at Tab A of the Statement of Facts and Plea of No Contest.

6. On April 4, 2012, the College Investigator wrote to Dr. Marcin’s counsel again seeking Dr. Marcin’s complete original patient chart for Patient A.
7. On April 19, 2012, the College Investigator spoke with Dr. Marcin’s counsel who advised they did not have the chart for Patient A as the original charts remained with the OPP. Counsel advised that Dr. Marcin had requested that the OPP return her original charts to her.
8. On July 10, 2012, the College was advised by the OPP that all seized items had been returned to Dr. Marcin.
9. On August 17, 2012, as a result of the advice from the OPP, the College Investigator requested that Dr. Marcin provide the College with Patient A’s complete patient chart, among other materials.
10. On September 20, 2012, the College Investigator again requested Patient A’s original patient chart, among other information. On September 20, 2012, counsel for Dr. Marcin advised the College Investigator that information was being gathered and would be delivered the following week.
11. On October 11, 2012, counsel for Dr. Marcin advised the College Investigator that Dr. Marcin advised that she will be couriering the original patient chart for Patient A to her counsel that day.
12. On December 3, 2012, the College Investigator left a message for counsel for Dr. Marcin indicating that the College had not received the original patient chart for Patient A.
13. On December 3, 2012, counsel for Dr. Marcin replied that they were working to obtain those records and will send the information as soon as possible.

14. On December 18, 2012, the College received Dr. Marcin's original patient chart for Patient A, sent under cover of a letter dated December 14, 2012 from Dr. Marcin's counsel.

**(b) Record Bearing the Date "November 28, 2010"**

15. The original chart of Patient A as delivered to the College contained a letter from Dr. Marcin to Patient A bearing a date in November 2010. It is signed in blue ink by Dr. Marcin and stamped "copy". A color copy of the letter is attached at Tab B of the Statement of Facts and Plea of No Contest.
16. In the letter, Dr. Marcin purports to formally terminate her doctor-patient relationship with Patient A.
17. This letter was not in the chart when it was seized by the OPP on March 30, 2011.

**(c) Dr. Marcin Created the "November 2010 Termination Letter" on December 5, 2012**

18. In the course of the College investigation, the College obtained three computers used by Dr. Marcin.
19. The College retained Mr. C, a Certified Information Systems Security Expert, a Certified Fraud Examiner and a Certified Information Systems Security Auditor, to analyze Dr. Marcin's computers. A copy of his CV is attached at Tab C of the Statement of Facts and Plea of No Contest.
20. From one of Dr. Marcin's laptops, Mr. C recovered a document entitled "letter of termination [Patient A] nov 2010.wps", a copy of which is attached at Tab D of the Statement of Facts and Plea of No Contest. This is the electronic copy of the signed letter that was contained in the chart Dr. Marcin provided to the College on December 14, 2012 and received by the College on December 18, 2012.
21. Mr. C conducted a forensic analysis and determined that the document entitled "letter of termination [Patient A] nov 2010.wps", bearing a date in November 2010 was in fact created by Dr. Marcin on December 5, 2012 at 12:42 p.m.

**(d) Dr. Marcin Accessed the Shared Gmail Account**

22. As set out in paragraph 66 of the Agreed Statement of Facts dated January 13, 2016, Mr. C determined that a short-cut had been created on May 18, 2010 on Dr. Marcin's laptop to access the shared Gmail email account.
23. Mr. C also determined that the shared Gmail account was accessed on Dr. Marcin's laptop and a message located in the drafts folder of the shared Gmail email account was composed and/or read.
24. Dr. Marcin accessed the shared Gmail account on or after May 18, 2010 and composed and/or read emails in the drafts folder of the account.
25. With respect to his forensic analysis of each of the 3 of Dr. Marcin's computers, Mr. C determined that it is highly unlikely that he was able to recover all emails exchanged between judy\_marcin@email.com and [Patient A]@email.com or all emails from the shared Gmail account. Web based emails which are read and/or created using a web based service have a greater chance of not being recovered from a hard drive than they do of being recovered.
26. A copy of Mr. C reports are attached at Tab E of the Statement of Facts and Plea of No Contest.

**PART II: PLEA OF NO CONTEST**

27. Dr. Marcin pleads no contest to the facts set out above, and does not contest, for the purposes of College proceedings, that she engaged in disgraceful, dishonourable and unprofessional conduct including by:
  - (a) Providing inaccurate and misleading information to the College investigator in the College Investigation, obstructing the College investigation and attempting to minimize her boundary violations with Patient A;

- (b) Providing and creating a false patient record to provide inaccurate and misleading information to the College, including that she terminated the doctor-patient relationship with Patient A, and that she did so in a professional manner.”

## **FINDINGS**

The allegations against Dr. Marcin involved different areas of her professional practice. The Committee’s findings are as follows:

### ***Dr. Marcin’s Criminal Conviction of Fraud***

The Committee accepted the facts as set out in the Statement of Agreed Facts as true. The Committee also accepted Dr. Marcin’s admission of professional misconduct in respect of her criminal conviction of fraud.

In relation to this misconduct, the Committee found that Dr. Marcin committed an act of professional misconduct in that she: has been found guilty of an offence that is relevant to her suitability to practice; engaged in conduct which would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and engaged in conduct unbecoming a physician.

In making these findings, the Committee noted that, by repeatedly billing for services which she did not provide, Dr. Marcin was purposefully dishonest and demonstrated a profound disregard of her professional responsibility. Such misconduct is extraordinarily serious. It erodes the public’s trust in the medical profession and impedes the proper function of the health care system. Cheating OHIP is a breach of trust with patients, the profession, and society at large.

### ***Patient A***

The College alleged that Dr. Martin engaged in disgraceful, dishonourable or unprofessional conduct regarding an inappropriate relationship with her patient, Patient A. The chronology of the relationship is spelled out in detail in the Statement of Agreed

Facts (para 6-68). Dr. Marcin admits these facts constitute professional misconduct as alleged.

The Committee found that Dr. Marcin had an inappropriate relationship with Patient A which would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee found that Dr. Marcin violated boundaries because she drove Patient A, a vulnerable patient who had told her of his romantic feelings for her, to a vacation site in Ontario. The Committee also found that Dr. Marcin seriously violated boundaries when she allowed Patient A to stay with her in the same room at Hotel Z, share meals, go shopping together, and engage in other activities with him over four days. There were options available to Dr. Marcin to manage the situation because other rooms had been available at Hotel Z. It would also have been possible for Dr. Marcin to take Patient A back to his home. This episode changed their relationship and precipitated the purported cessation of the doctor-patient relationship.

The College asked the Committee to infer that Dr. Marcin and Patient A planned in advance to spend time at Hotel Z together. The Committee makes no such inference. To draw such an inference would be speculative.

The Committee found that the Statement of Agreed Facts demonstrated that Patient A had tricked Dr. Marcin, and that it was only upon reaching their destination that he informed her that it was really his intention to spend time with her.

While there were phone calls and emails between Patient A and Dr. Marcin, the Committee heard no evidence of their contents. Most of the calls in the months before the Hotel Z episode were brief. While it is true that reservations were made for two adults, there was no evidence as to how the reservation record was filled out or whether Dr. Marcin may have expected a family member or friend to stay with her.

The Committee heard no *viva voce* evidence on this issue and relied on the Statement of Agreed Facts as filed. The evidentiary gap is such that the inference that Patient A and Dr. Marcin planned to spend the time at Hotel Z together is speculative at best. There was



no direct evidence to suggest that a tryst was planned. In *R. v. Carter*, 2015 ONCA 287 the Court of Appeal notes that the process of drawing inferences from evidence is not the same as speculating, even where the circumstances permit an educated guess, and if there is a gap between the primary fact and the inference sought, the inference cannot be drawn.

### ***OHIP billing of Patient A***

The College also alleged that Dr. Marcin engaged in disgraceful, dishonourable or unprofessional conduct in respect of her billing of OHIP under K007A for Patient A after August 2010 on 22 occasions. No psychotherapy was provided on these occasions. In addition, record-keeping irregularities existed. There were many duplicate chart notes and a system of two appointment books which, at times, contained discrepancies when compared to each other. Dr. Marcin admitted to these facts and that her behaviour constitutes professional misconduct as alleged.

The Committee found that Dr. Marcin engaged in disgraceful, dishonourable or unprofessional conduct in regards to her billing OHIP and record keeping regarding Patient A.

### ***Fabricating Patient A's medical records***

The College alleged that Dr. Marcin engaged in disgraceful, dishonourable, or unprofessional conduct by fabricating a letter and putting it in Patient A's medical file. The particulars are noted in the Statement of Facts and Plea of No Contest. Dr. Marcin did not contest this allegation. Neither did she contest a finding that this constitutes disgraceful, dishonourable or unprofessional conduct as alleged.

The Committee found that Dr. Marcin engaged in disgraceful, dishonourable, or unprofessional conduct by creating a false and misleading patient record.

Dr. Marcin fabricated and inserted a letter in Patient A's medical chart two years after the date on the letter. She was intentionally attempting to convey to the College that she had terminated the doctor-patient relationship with Patient A in a professional manner.

The College also alleged that Dr. Marcin engaged in disgraceful, dishonourable, or unprofessional conduct by providing misleading and inaccurate information to the College investigator, obstructing the College investigation, and attempting to minimize her boundary violations with Patient A.

Dr. Marcin neither contested that she did so, nor that her behaviour constitutes professional misconduct.

The Committee found that Dr. Marcin engaged in disgraceful, dishonourable, or unprofessional conduct by providing misinformation to the College, delaying the College's investigation, and attempting to minimize her relationship with Patient A.

In making this finding, the Committee noted that the College, in carrying out its role as regulator, relies on the honesty of its members. When a member purposefully provides misinformation, the effective regulation of the profession is seriously undermined.

***Prescribing of narcotics, narcotic preparations, controlled drugs, Benzodiazapines, and other targeted substances***

The College alleged that Dr. Marcin failed to maintain the standard of practice of the profession and is incompetent in her narcotic prescribing practices. In addition, the College also alleged that Dr. Marcin engaged in disgraceful, dishonourable or unprofessional conduct. The Committee accepted the facts as set out in the Statement of Agreed Facts and Dr. Marcin's admission.

In regards to this misconduct, the Committee found that Dr. Marcin committed professional misconduct in that she: has failed to maintain the standard of practice of the profession; has engaged in disgraceful, dishonourable or unprofessional conduct; and is incompetent.

Dr. Marcin issued multiple prescriptions for narcotics for eight patients in the two weeks prior to signing an undertaking with the College in which she agreed to cease to practice medicine in all jurisdictions. In doing so, Dr. Marcin purposely thwarted the protection the College was putting in place to protect patients.

Additionally, as noted in the expert report of Dr. D, Dr. Marcin displayed a lack of knowledge, skill, and judgment, and she exposed all of the patients reviewed to harm or injury. Dr. Marcin exhibited a total disregard for well-accepted guidelines for routine addiction management. By issuing multiple prescriptions, Dr. Marcin increased the risk of overdose, abuse, and diversion of drugs.

***Breaches of undertakings made to the College***

The Committee accepted the account in the Statement of Agreed Facts regarding Dr. Marcin's undertakings with the College from March 26, 2014 and December 17, 2014. The Committee accepted Dr. Marcin's admission that she breached her undertakings and that this constitutes professional misconduct.

The Committee found that Dr. Marcin contravened a term, condition, or limitation on her certificate of registration in respect of her March 26, 2014 undertaking.

Dr. Marcin's breach of her March 26, 2014 undertaking involved prescribing narcotics and other monitored drugs when she was expressly prohibited from doing so.

The Committee found that Dr. Marcin contravened a term, condition, or limitation on her certificate of registration in respect of her December 17, 2014 undertaking.

Dr. Marcin's breach of her December 17, 2014 undertaking involved a failure to fulfil the terms of a monitoring and rehabilitation plan. Dr. Marcin had not completed a CPD Plan and had not completed the Psychotherapy Certificate Program as she had undertaken to do.

Defence counsel submitted that Dr. Marcin made a good faith effort to comply. The Committee did not agree. While the Committee believed that Dr. Marcin has made some effort to comply with the monitoring terms, it is clear from the totality of the record that she repeatedly failed to comply. The Committee recognized that illness and other unexpected situations may impact on compliance. However, the excuse that Dr. Marcin offered – that she was unable to pay her supervisor – is not acceptable. The College monitor repeatedly reminded Dr. Marcin of the terms of her undertaking throughout the monitoring.

The undertakings at issue were clear. The disregard Dr. Marcin demonstrated was purposeful, flagrant, and shows a disregard of her governing body.

## **SUMMARY OF THE FINDINGS**

### ***Criminal conviction of fraud***

The Committee found that Dr. Marcin committed an act of professional misconduct in that she has: been found guilty of an offence that is relevant to her suitability to practice; engaged in conduct which would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional; and engaged in conduct unbecoming a physician.

### ***Patient A***

The Committee found that Dr. Marcin had an inappropriate relationship with Patient A which would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee also found that Dr. Marcin engaged in disgraceful, dishonourable or unprofessional conduct in regards to her billing OHIP and record keeping regarding Patient A.

### ***Fabricated patient medical records***

The Committee found that Dr. Marcin engaged in disgraceful, dishonourable, or unprofessional conduct by creating a false and misleading patient record; by providing misinformation to the College; by delaying the College's investigation, and by attempting to minimize her relationship with Patient A.

### ***Prescribing narcotics and related substances***

The Committee found that Dr. Marcin committed professional misconduct in that she has failed to maintain the standard of practice of the profession and that she engaged in disgraceful, dishonourable, or unprofessional conduct.

The Committee further found Dr. Marcin to be incompetent.

***Breaches of undertakings made to the College***

The Committee found that Dr. Marcin contravened a term, condition, or limitation on her certificate of registration in respect of both her March 26, 2014 and December 17, 2014 undertakings to the College.

**CONCLUSION**

In addition to the 12 separate findings outlined above, the Committee notes the breadth and seriousness of Dr. Marcin's misconduct.

**PENALTY AND REASONS FOR PENALTY**

The Discipline Committee (the "Committee") of the College of Physicians and Surgeons of Ontario delivered its written decision and reasons for decision on finding in this matter on March 30, 2016. The Committee found that Dr. Marcin has committed acts of professional misconduct in that she has been found guilty of an offence relevant to her suitability to practice; engaged in conduct which would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; failed to maintain the standard of practice of the profession; contravened terms, conditions, or limitations on her certificate of registration; and engaged in conduct unbecoming a physician. The Committee also found that Dr. Marcin is incompetent as defined by the Code.

The Committee heard evidence and submissions on penalty and costs on July 7, 2016; the Committee delivered its decision the same day.

**EVIDENCE AND SUBMISSIONS ON PENALTY AND COSTS**

Counsel for the College and counsel for Dr. Marcin made a joint submission as to the appropriate penalty. The joint submission proposed a reprimand and revocation of Dr. Marcin's certificate of registration.

Counsel for the College and counsel for Dr. Marcin disputed whether costs should be awarded. Counsel for the College asked for costs in the amount of \$10,000; counsel for Dr. Marcin submitted that no costs should be awarded.

In determining an appropriate penalty, the Committee considered the findings in its Decision and Reasons for Decision in this matter dated March 30, 2016, the totality of the evidence and its impact, the submissions of the parties and the case law upon which they relied.

Further, the Committee acknowledged the well accepted law that a joint submission as to appropriate penalty must be accepted unless the proposed penalty would bring the administration of justice into disrepute and be contrary to the public interest.

**DECISION ON PENALTY AND COSTS**

For the reasons that follow, the Committee found that a reprimand and revocation of Dr. Marcin's certificate of registration is the only penalty which would be appropriate in this matter. The Committee ordered that Dr. Marcin's certificate of registration be revoked immediately and that she attend before the Committee to be reprimanded.

The Committee also ordered that Dr. Marcin pay costs to the College in the amount of \$10,000.

**REASONS FOR DECISION ON PENALTY**

The principles relevant to the imposition of penalty in disciplinary proceedings are well-established. The protection of the public is the paramount consideration. Others include maintenance of public confidence in the reputation and integrity of the profession and in the principle of effective self-governance; general deterrence as it applies to the membership as a whole; specific deterrence as it applies to the member; and the potential for the member's rehabilitation.

In this matter dishonesty, lack of personal integrity, incompetence and ungovernability all play a central role. The Committee was staggered by the breadth of professional misconduct which demonstrated Dr. Marcin's blatant disregard of the health care system, the responsibilities of the medical profession and its governance. The profound effect of such behavior cannot be underestimated. There is simply no place in the medical profession for such reprehensible conduct. Revocation is the only outcome.

The reprimand is an opportunity for the Committee to address Dr. Marcin directly regarding its view of her misconduct.

**Summary of the Misconduct**

The Committee found that Dr. Marcin has committed acts of professional misconduct in that she has been found guilty of an offence relevant to her suitability to practice; engaged in conduct which would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; failed to maintain the standard of practice of the profession; contravened terms, conditions, or limitations on her certificate of registration; and engaged in conduct unbecoming a physician. The Committee also found that Dr. Marcin is incompetent as defined by the Code. The specific facts and circumstances are outlined in detail in the Committee's Decision and Reasons for Decision dated March 30, 2016.

In addition to the twelve separate findings referred to above, the Committee makes the following comments in the face of the extent of the professional misconduct.

- Dr. Marcin demonstrated repeated and pervasive dishonesty. Her fraudulent billing of OHIP for which she was criminally prosecuted, resulted in fewer dollars available for the care and treatment of Ontario patients in need. The College and the public rely upon and expect physicians to be honest in their OHIP billing. Serious consequences must follow when dishonesty occurs;
- Dr. Marcin demonstrated flagrant self-interest as well as dishonesty when she placed a letter terminating her professional relationship with Patient A in his medical record. This falsification of her patient's medical record was uncovered in a forensic audit and is a further illustration of self-interest and deception;
- Dr. Marcin placed her patients in a dangerous position when she failed to maintain the standard of practice and was incompetent in her prescribing of narcotics. She put the community at risk for drug abuse and drug diversion which is acknowledged to be a significant problem;
- Dr. Marcin demonstrated a lack of propriety and a disregard of her professional responsibility in her boundary violations with Patient A. In doing so, she abused the trust inherent in the physician patient relationship;
- Dr. Marcin demonstrated an unacceptable disregard of the role of the College in the governance of the profession by repeated breaches of undertakings she made to the College. These undertakings were made to protect the public from harm.

Dr. Marcin's major errors in clinical judgment and her lack of insight as to her fundamental professional responsibilities are of a degree in the view of the Committee that no form of remediation is appropriate.

The Committee accepts that this was the first time Dr. Marcin has appeared before it and that the hearing proceeded by way of agreed statement of the facts and admission or plea of no contest. However, in the face of such overwhelming misconduct, the Committee is



of the view that there are no significant mitigating circumstances and revocation is the only proportional penalty.

### **Case Law**

The Committee was of the view that there was no reasonably analogous case upon which it could rely. However it is clear that revocation is within the range of penalty for findings of dishonesty, failure to maintain the standard of practice, and incompetence as illustrated below.

In *CPSO v. Kitakufe* (2010) the Committee imposed revocation for fraud involving the Ministry of Health and Long Term Care (MOHLTC). In their decision, the Committee notes the serious impact of such fraud which affects patients who may not get all the help they need or who have to wait because of limited health care resources. The same principle applies to Dr. Marcin.

In *CPSO v. Sinclair* (2015) and *CPSO v. Dr. Scott* (2002), the Committee similarly imposed revocation for fraud involving the MOHLTC.

In *CPSO v. Liberman* (2012), the Committee imposed revocation noting dishonesty, a failure to maintain the standard of practice and incompetence. The findings made in Dr. Marcin include similar misconduct.

### **REASONS FOR DECISION ON COSTS**

The Committee found that this was an appropriate case in which to award costs. Costs are ordered in the amount of \$10,000. This amount is to be paid to the College within 30 days.

The Committee notes the costs awarded reflect only a partial indemnification and that the College has reduced the amount sought by one day given that it was unsuccessful in

arguing that the Committee should make an inference as to preplanning in regard to the episode at Hotel Z.

The Committee was not persuaded by defence argument that the costs should be reduced; there are no extraordinary circumstances for the Committee to depart from its normal approach to awarding costs.

That Dr. Marcin paid her annual renewal fee for 2016 is immaterial; she was required to maintain her membership in order for her to continue to practise.

### **ORDER**

The Discipline Committee orders and directs that:

1. Dr. Marcin appear before the Discipline Committee to be reprimanded.
2. The Registrar revoke Dr. Marcin's certificate of registration effective immediately.
3. The Committee further orders that Dr. Marcin shall pay to the College its costs fixed at \$10,000.00 within 30 days of the date of this order.

At the conclusion of the hearing, Dr. Marcin waived her right of appeal under subsection 70 (1) of the Code and the Committee administered the public reprimand.

TEXT of PUBLIC REPRIMAND

Delivered July 7, 2016

in the case of the

COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO

And

DR. JUDI DIANNE MARCIN

THE CHAIRPERSON: Dr. Marcin, it is always unfortunate when a member of our profession appears before this Committee. The Committee is staggered by the breadth and totality of the egregious misconduct displayed by you.

In fact, the Committee finds it hard to believe that one physician can transgress almost the entire spectrum of professional misconduct, which included OHIP fraud, significant repeated boundary violations, dishonesty, breach of undertakings of your regulatory body, and obstructing a College investigation.

In addition, you have been found to be incompetent in regard to your narcotic prescribing practice. Not only did you place your patients at risk, you also put your community at risk for drug abuse and drug diversion which is a growing and significant problem in our society. Your lack of integrity is intolerable and offensive to hard-working physicians and the citizens of Ontario.

In addition, you demonstrate a blatant disregard for your governing body when you circumvented safeguards which were put in place to protect the public. If there was ever a compilation of misconduct that constitutes disgraceful, dishonourable or unprofessional conduct, it's a misconduct that you repeatedly exhibited.

Dr. Marcin, not only do you leave the profession in disgrace today, but you have also disgraced the profession as a whole by your actions.

*This is not an official transcript*