NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Mitchell, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names of sexual abuse witnesses (complainants and similar fact witnesses) or information that could identify them, under subsection 47(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the Regulated Health Professions Act, 1991.

The Committee also made an order to prohibit the publication of the names of patients disclosed at the hearing or any information that could identify them, under section 45(3) of the Code.

> Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:
>
> Every person who contravenes an order made under … section 45 or 47… is guilty of an offence and on conviction is liable,
>
> (a) in the case of an individual to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence;
> (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. Mitchell, 2018 ONCPSD 29

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. PAUL ALBERT MITCHELL

PANEL MEMBERS: **DR. MARC GABEL (Chair)**
MR. SUDERSHEN BERI
DR. PAUL CASOLA
MR. PETER PIELSTICKER
DR. PAMELA CHART

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS BREESE DAVIES
MS SAYRAN SULEVANI

COUNSEL FOR THE COMPLAINANT:

MS KATE HUGHES

COUNSEL FOR DR. MITCHELL:

MR. JEFFREY MUTTER
MS ERIN PAGE

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. ROBERT COSMAN

Hearing Dates: April 10 -14, May 30-31, October 24, 27, 31,2017 and December 7, 15, 2017
Decision Date: June 18, 2018
Release of Written Reasons: June 18, 2018

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the "Committee") of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on April 10 to 13, May 30 to 31, October 24, 27 and 31, December 7 and 15. At the conclusion of the hearing, the Committee reserved its decision on finding.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Paul Albert Mitchell committed an act of professional misconduct:

1. under paragraph 1(1)2 of O Reg. 856/93 in that he has failed to maintain the standard of practice of the profession;

2. under clause 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the "Code") in that he engaged in sexual abuse of patients; and

3. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991("O. Reg. 856/93"), in that he has engaged in 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.

The Notice of Hearing also alleged that Dr. Mitchell is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

RESPONSE TO THE ALLEGATIONS

Dr. Mitchell denied all the allegations in the Notice of Hearing.

OVERVIEW

Dr. Mitchell is a GP psychotherapist practising in Orleans Ontario. The allegations against Dr. Mitchell relate to a single complainant, Patient A., who was a patient of Dr. Mitchell's from 2009 to 2013. Patient A expressed a number of concerns that she had about the care she received by Dr. Mitchell. This included swearing during therapy sessions, name-calling, sexual remarks, violating boundaries and personal space, threats to terminate therapy and Dr. Mitchell not acting in her best interest. Patient A complained that Dr. Mitchell had been disrespectful to her and that her concerns, which she had addressed to him, had not been heard.

Patient A first began seeing Dr. Mitchell in February 2009 because of symptoms of anxiety, depression and suicidality. She terminated therapy with Dr. Mitchell in September 2013. She saw Dr. Mitchell for approximately 200 sessions during this time period. Dr. Mitchell initially diagnosed Patient A with a mild depression and an anxiety disorder. Later on, these diagnoses evolved to that of a bipolar mood disorder and adult attention deficit disorder. Other diagnoses documented by Dr. Mitchell, albeit at the end of his therapy with her, included borderline personality disorder and antisocial personality. Initially, medications were not prescribed by Dr. Mitchell; rather Dr. Mitchell directed the patient's family doctor to do so. Later on, through the course of treatment, Dr. Mitchell wrote his own prescriptions for the patient. Initially, the sessions were 50 minutes once per week, but they increased in frequency to two times per week, including doubling of session duration times, then sometimes three times a week, then back to double sessions twice a week.

Interactions between Patient A and Dr. Mitchell throughout the time that she was his patient included face-to-face meetings in his office, telephone messages/conversations, text messages and one face-to-face meeting outside of Dr. Mitchell's office, on the grounds of a university.

Dr. Mitchell treated Patient A by using a therapeutic technique variously called by him "PSR" (Problem-Solving Response) therapy, "bitching and complaining therapy," as well as "seeing sequence therapy."

Patient A initially recorded her sessions with Dr. Mitchell because she wanted to listen to them again and informed Dr. Mitchell of so doing. Later on, however, she recorded the sessions without his knowledge, because she believed that she was being criticized and demeaned by Dr. Mitchell, and was concerned that no-one would believe her.

Patient A first contacted the College in 2011 regarding filing a complaint against Dr. Mitchell, but never followed through with a formal complaint. She filed a formal complaint with the College on May 16, 2013. After Patient A had filed her complaint with the College, she text-messaged Dr. Mitchell requesting an appointment. After exchanging a series of text-messages, Dr. Mitchell and Patient A met face-to-face in August 2013 on the grounds of a university. Thereafter, Patient A returned for appointments with Dr. Mitchell at his office, between August and September 2013. The final appointment took place in September 2013, during which Dr. Mitchell gave Patient A a letter stating that he would continue to provide medical care to her, because he never terminated a therapeutic relationship with his patients and because he never gave up on patients. The letter also stated that he would continue to provide medical care to her, unless she instructed him to do otherwise.

On September 19, 2013, Patient A emailed the College investigator, Ms Stone, a letter terminating care with Dr. Mitchell and asked the College investigator to provide a copy of the letter to Dr. Mitchell. After this, Patient A continued to text Dr. Mitchell; some of her texts were threatening in nature. Dr. Mitchell did not respond to these texts. He called the police for direction and was told to tell the patient to stop contacting him or the police would be involved. He did so and after this, Patient A stopped contacting him.

THE EVIDENCE

The Committee admitted and considered the following evidence:

1. Oral testimony of Patient A, Dr. Mitchell and Dr. Goldstein, the College's expert witness.

2. Recordings of certain of Patient A's therapy sessions with Dr. Mitchell, recorded by Patient A without Dr. Mitchell's knowledge. Those audio recordings were played to the Committee during the hearing. Further, a complete transcript of these recordings was available for review by the Committee.

3. Documentary evidence, including: Patient A's patient chart completed by Dr. Mitchell; text messages between Dr. Mitchell and Patient A; Dr. Mitchell's practice handouts; correspondence between the College and Patient A; and correspondence between the College and Dr. Mitchell.

Witness Testimony

Patient A

Patient A testified at the hearing about her involvement with Dr. Mitchell from when she first began seeing him as a patient in February 2009 until their last appointment in September 2013. In total, there were approximately 200 sessions over five years. During her treatment by Dr. Mitchell, Patient A recorded six sessions without Dr. Mitchell's knowledge. Patient A provided three of these audio recordings to the College, which were filed with the Committee and played at the hearing. Patient A stated that she initially considered filing a complaint with the College in 2011, because she believed that Dr. Mitchell was giving her "bad therapy" because she was a "bad person." Patient A testified that despite this, she continued to see Dr. Mitchell, because he told her that he was the only person that could help her and because she hoped that with further effort she could become a "good patient" and would get "good therapy."

Patient A testified that she made a significant effort at trying to work with and understand the therapeutic technique offered by Dr. Mitchell. She said she revised his PSR template to make it more user-friendly for her and at one point recorded, with Dr. Mitchell's permission, some of her sessions with him in order to learn more about the therapeutic technique. However, she testified that in the end, she had little understanding of the concepts of Dr. Mitchell's therapeutic technique, which made her believe that the therapy was harmful to her. She stated that she felt

demeaned and degraded by the therapy and it was on this basis that she brought her complaint to the College. She saw Dr. Mitchell as being emotionally unpredictable. She stated that at times, Dr. Mitchell was happy with her and at other times, he was unhappy. She testified that she struggled to understand why. Patient A described feeling vulnerable, fragile and degraded. She stated that Dr. Mitchell had "put me down and insulted me."

Patient A acknowledged that she had made threats of violence towards Dr. Mitchell and that she harbored a tremendous amount of resentment to Dr. Mitchell. College counsel questioned Patient A about her texting to Dr. Mitchell, which included messages containing false information that Dr. Mitchell had put his fingers in her panties (Transcript Vol 4, p 4-86), that she filed a police report against Dr. Mitchell (Transcript Vol 4, p 4-81), that she mailed Dr. Mitchell back 20 photographs, which she claimed he gave to her (Transcript Vol 4, p 4-83), and about having a child with Dr. Mitchell (Transcript Vol 4, p 4-84-85). During her testimony, Patient A acknowledged that these messages were untrue. She did not try to defend or justify this.

Dr. Mitchell

Dr. Mitchell testified that he graduated from the University of Western Ontario medical school in 1981. After graduation, he interned at the Ottawa General Hospital from 1981 to 1982 and then spent six years working as a GP in Timmins, Ontario. He entered a two-year fellowship at the Hincks Institute in Toronto, but withdrew after one year. He received training in family therapy from Dr. Ted Waring at the University of Western Ontario and training in family therapy in New Rochelle, New York. He did some training in Wisconsin, at the Institute for Solution-Focused Brief Therapy. He stated that he spent a great deal of time learning about psychotherapy through reading, consultation with other physicians and attending conferences. Dr. Mitchell testified that he moved to Ottawa in 1991 to practise, 100% of his practice being psychotherapy since that time.

Dr. Mitchell testified that typically, he starts a day at 7:20 a.m. and works until 12:20 p.m. for five days. On Tuesdays and Thursdays he returns to work from 2:30 p.m. to 8:30 p.m. He also works on Saturdays. He testified that booking of patients was previously done by telephone but

more recently, he has done it via text messaging. He estimated his current practice to consist of 76 active patients, 48 of whom he sees about once a week; the remaining patients are seen at intervals, anywhere between weeks to months. He estimated that 39 patients are diagnosed with ADHD, 51 patients – anxiety, and 21 patients – borderline personality. Dr. Mitchell estimated that about 12 to 13 of his patients are drug users and nine had parenting issues. He described two groups of patients in general terms: "multiple nonfunctioning" and "single nonfunctioning" patients.

Dr. Mitchell described his PSR therapeutic technique, making reference to neuroanatomical and neurobiological processes. He stated that the PSR databases submitted in evidence (Exhibit 17 and 18) had their origin from "hundreds of patients," the concept evolving over time from one patient to the next with whom he worked. He testified that he has never written out a PSR as a therapeutic template himself, nor has he submitted his technique for peer review or publication.

With respect to Patient A, Dr. Mitchell testified that at his first appointment with her in February 2009, he diagnosed Patient A with anxiety and depression. Dr. Mitchell testified that he believed Patient A understood the therapeutic process.

Dr. Mitchell testified about application of his therapeutic technique in relation to his management of Patient A and, more globally, its application generally to patient care.

Inappropriate Comments and Use of Profanity

Dr. Mitchell was asked about maintaining standards of practice in working with his patients. When asked about his comment to Patient A about her being “sex on a stick” and his use of profanity with Patient A, Dr. Mitchell testified that every physician needs, at some point, to choose between standards of practice and the patient. He stated that given this choice, "I will choose the patient every time." He stated that the standards of practice are important, but that one needs to determine what the exceptions are. He stated that through his extensive work with patients, he is able to determine what these exceptions are in terms of “acceptability,” that is, what acceptable exceptions are. For example, he testified that he believed that in the context of

the sessions where he made sexual comments or used profanity with Patient A, such language was appropriate.

Dr. Mitchell was asked to comment on a number of negative comments and profanity he had directed toward Patient A, such as "there's no hope for you right now," "you're completely hopeless," "what the fuck do you care," "therefore you have no fucking life." Dr. Mitchell testified that he saw these comments as appropriate given the moment and context in which they were made. He disagreed with the expert, Dr. Goldstein, who testified that the use of such comments was inappropriate. He stated that Dr. Goldstein "does not deal with reality: she deals with guidelines that at times do not have a connection to the reality of therapy."

When Dr. Mitchell was presented with a transcript of the audiotape recordings (Exhibit 8a, p 55) where he is angry at the patient and clearly acknowledges it, he described it as role-playing, while the Committee noted that the patient sounded bewildered, confused and seeking Dr. Mitchell's approval. Dr. Mitchell explained his behaviour as trying to tell her that she was hurting him and having her take ownership of this: "it's about taking in the gift of insight I was trying to give her, but she wanted no part of it."

Transference/Counter-transference during Therapy Sessions with Patient A

Dr. Mitchell defended the transference and counter transference both sexualized and non-sexualized which occurred during sessions with Patient A, stating that this was part of the therapeutic technique. He testified that he encouraged it.

Text Messaging with Patient A

Dr. Mitchell was asked about his text messaging with Patient A (Exhibit 20), which occurred after the patient had submitted her complaint to the College. Dr. Mitchell testified that the text messages between himself and Patient A were solely for the purpose of arranging appointment times and that he skimmed the messages to look at requests for appointment times. However, upon further examination, he admitted that there was an ongoing dialogue and interaction with

Patient A. The Committee noted that, Dr. Mitchell was unable to explain the rationale for his text messaging with Patient A, other than for the purpose of scheduling appointments. He acknowledged that he continued to exchange text messages with Patient A after Patient A made her complaint to the College "to build a record, of the patient's interaction with him."

Meeting at the University Campus Park Bench

Dr. Mitchell stated that he was unaware of the purpose of this meeting. He testified that Patient A told him she wished to meet and he agreed to meet. Dr. Mitchell was asked how he was able to complete a detailed written note on this meeting, given that it was held on a park bench. He stated that after he got home, "I just wrote down everything I could remember."

Ending the Doctor-Patient Relationship

Dr. Mitchell testified that in his opinion, the doctor-patient relationship "never" ends. He stated that if the patient is willing to work and if the patient maintains contact, therapy does not end. He said that he has never terminated a patient. He disagreed with Dr. Goldstein's opinion that he should have terminated therapy with Patient A when she made a complaint about him to the College. Dr. Mitchell commented on Dr. Goldstein's opinion regarding working with patients, stating that there should be a sign on such doctors' offices doors reading: "Doctors with Good Judgment Give Up on Patients." Dr. Mitchell acknowledged that he continued to see Patient A after she complained to the College in order "to build a record."

Patient A's Texting of Dr. Mitchell after Termination of the Doctor-patient Relationship

Following their final appointment in September 2013, Dr. Mitchell received 1800 text messages from Patient A. This resulted in Dr. Mitchell going to police to make a report. The police told Dr. Mitchell to tell Patient A to stop, or she would be charged. Patient A stopped sending messages to Dr. Mitchell and he never heard from her again.

Dr. Goldstein

Dr. Goldstein is a GP Psychotherapist and a family physician practising psychotherapy. Dr. Goldstein testified at the hearing as an expert witness for the College. In preparation of her expert report, submitted to the College on March 21, 2016 and amended on May 2, 2017, Dr. Goldstein reviewed the following materials:

- Dr. Mitchell's clinical record of Patient A, which included about 600 pages;
- The audiotapes of three of Dr. Mitchell's therapy sessions with Patient A, recorded by Patient A;
- The transcripts of the three recorded therapy sessions;
- Dr. Mitchell's responses to transcripts and audio recordings of the three therapy sessions with Patient A;
- Written communications between the College and Patient A in 2011;
- Two psychiatric consultant reports prepared by two physicians Patient A had seen (Dr. Catton and Dr. Gallipeau).

Dr. Goldstein provided her expert opinion on the following aspects of Dr. Mitchell's practice:

- Therapeutic technique;
- Boundary violations/fostering of transference – countertransference;
- Sexualized comments and behaviours;
- Text messaging with the patient.

Therapeutic Technique

Dr. Goldstein opined that Dr. Mitchell's therapeutic technique created significant problems in dealing with Patient A, given her diagnosis of borderline personality disorder. The problems created by Dr. Mitchell's therapy with this patient included:

- fostering of splitting (for example "good me, bad me") in a patient where splitting is a problem;
- amplifying the patient's poor self-worth ("bad me") where patient's self-esteem and identity is a significant problem;
- fostering memorization as a learning tool, rather than focusing on content;
- using the technique of "shunning," which was punitive and rejecting of a patient who was very sensitive to rejection;
- focusing more on blaming than encouragement, thereby assaulting the patient's self-esteem;
- using sarcasm, which was not helpful to the patient and was demeaning;
- utilizing a "mirroring" technique, which appeared to embellish the issue at hand and mock the patient.

Dr. Goldstein testified that in her opinion, this therapeutic technique sent a confusing message to Patient A. According to Dr. Goldstein, the pattern of Dr. Mitchell's therapy with Patient A (duration and frequency of sessions) was unusual, excessive, and would serve to foster further dependency. Dr. Goldstein opined that Dr. Mitchell's therapeutic behaviours are verbally and emotionally abusive. She observed that Dr. Mitchell did not see his therapy as being abusive in any way, which led her to conclude that Dr. Mitchell has a lack of insight into his own behaviour. In Dr. Goldstein's opinion, Dr. Mitchell's therapeutic technique tended to foster dependency, familiarity (personal comments and text messages), and instability (irregular appointment times, communicating with or booking appointments with the patient into the evening hours). She noted that the sessions were inconsistent in terms of content, frequency, and length. In some sessions, Dr. Mitchell was quite involved and in others, much less so. There was almost complete unpredictability as to what Dr. Mitchell's involvement would be with Patient A from one session to the next.

Dr. Goldstein noted that Dr. Mitchell made repeated threats to terminate therapy with Patient A, either directly, by stating: "you can't be helped at this level you might as well leave," "you will be kicked out," or indirectly, by stating "no hope for you." In her expert opinion, continuously making such threats to a vulnerable patient is completely inappropriate.

Based on Dr. Mitchell's behavior described above, Dr. Goldstein concluded that Dr. Mitchell has failed to maintain the standard of practice of the profession in his treatment of Patient A.

Boundaries, Transference and Counter-transference, Swearing and Threatening, Meeting outside Office

Dr. Goldstein testified that in her opinion, Dr. Mitchell's therapeutic technique with Patient A demonstrated recurrent boundary violations both ways, i.e., from Dr. Mitchell towards Patient A, and from Patient A towards Dr. Mitchell. Dr. Goldstein noted that Patient A's boundary violations were not discouraged by Dr. Mitchell and at one point, actually appeared to be encouraged by him. In Dr. Goldstein's opinion, Dr. Mitchell did not have insight into the negative effects of these continued boundary violations.

Dr. Goldstein testified that Dr. Mitchell's therapy fostered an unhealthy transference and counter transference in Patient A, which Dr. Mitchell did not appear to be aware of, as evidenced by the two-way crossing of boundaries. Dr. Goldstein further noted that there were multiple examples of transference and counter-transference in Dr. Mitchell's interactions with Patient A and vice versa. The transference included "good vs. bad" transference as well as sexualized transference. Dr. Goldstein opined that Dr. Mitchell's use of text messaging with Patient A was too personal for communication between a doctor and a patient and at times, displayed poor judgment and appeared to be serving his own needs at the expense of the patient.

Dr. Goldstein opined that it is unprofessional for a physician to swear at the patient. There are limited circumstances where swearing might be acceptable but never at a patient. She referenced sessions where Dr. Mitchell recurrently told Patient A that she was "bull shitting" him and "you suck." Dr. Mitchell also made use of the word "Fuck" in sessions: "fuckin place," "fucking reason," "fuckin bullshit."

In addition, Dr Goldstein considered inappropriate Dr. Mitchell's meeting with Patient A on the park bench at a university. This meeting, she noted, took place after Patient A had complained to the College and there was no therapeutic value that could come of it.

Dr. Goldstein opined that Dr. Mitchell failed to maintain the standard of practice of the profession by failing to maintain appropriate boundaries with Patient A, by fostering transference and countertransference, by swearing and threatening Patient A, and by inappropriately meeting her outside of his office.

Sexualized Comments and Behaviour

Dr. Mitchell made inappropriate sexual references to the patient, specifically "sex on a stick" three times. Dr. Goldstein reviewed the *RHPA*'s definition of sexual abuse, which includes sexual intercourse or other forms of sexual relations and touching, behaviour or remarks of a sexual nature. She also reviewed the College policy recommendation to “avoid any behaviour or remarks that may be interpreted as sexual by a patient” and “do not make sexualized comments about a patient's body or clothing” (see College Policy on Maintaining Appropriate Boundaries and Preventing Sexual Abuse).

Dr. Goldstein opined that Dr. Mitchell’s “sex on a stick” comments to Patient A fell under the *RHPA*'s definition of sexual abuse, in that they were clearly remarks that could be interpreted as sexual by the patient, and they were comments about the patient’s body and clothing.

Text Messaging with Patient A

Dr. Goldstein reviewed the text messages exchanged by Dr. Mitchell and Patient A from May to October 2013, after the patient had filed a complaint with the College. With respect to the text messages, Dr. Goldstein opined as follows:

- Generally, text messages are a poor way of communicating with patients: they are not secure and not conducive to the type of dialogue that should occur in a psychotherapeutic relationship.

- These text messages, in contrast to the recorded sessions from 2011, were conciliatory and supportive as opposed to taped therapy sessions, which were derogatory and critical.

- It appeared to Dr. Goldstein that the communication was manipulative, serving Dr. Mitchell's own needs in the circumstances where the patient had made a complaint to the College, was seeing another physician and therefore, her care was being looked after. Further, the fact that Dr. Mitchell continued to communicate with the patient after she had filed the complaint against him was inappropriate. The complaint filed by the patient was very serious. There was a plethora of very concerning allegations that this patient had made against Dr. Mitchell. Continued contact through such forums as texting, or meeting face-to-face in a public place, was not an appropriate manner in which to resolve such complaints. According to Dr. Goldstein, Dr. Mitchell's continued communication with the patient showed poor judgment. In Dr. Goldstein's opinion, the patient should have been terminated from Dr. Mitchell's practice.

- The text messages demonstrated a marked shift in terms of control of the relationship. Initially, Dr. Mitchell was in control of the therapeutic relationship, but the text messages after August 2013 made it clear that the patient was "driving the boat." The patient appeared empowered through these texts, which further eroded the doctor-patient relationship, further eroded the boundaries and caused continuing inappropriate self-serving interaction on the part of Dr. Mitchell.

- The communication by texts between Dr. Mitchell and Patient A was overly friendly and much too familiar, versus that which should be observed in any doctor patient communication. Using gestures, such as a heart symbol or LOL or 'Gnite' (goodnight), demonstrate a smack of familiarity as does the timing, late-night communications of the text messages. Further, comments by Dr. Mitchell such as "yes my Queen, how doth thou command me" foster intimacy in a patient with sexual fantasies.

- Dr. Goldstein commented that even when the patient had made a comment that "the boundry (sic) violations and abuses caused the therapy to lose its potential to help me" (page 42 exhibit 20), Dr. Mitchell did not clue into this direct message. This demonstrated a marked lack of insight. Here was a clear example of the patient telling the doctor that there was a problem.

Dr. Goldstein opined that in failing to stop communicating with Patient A and repeatedly responding to her text messages in a self-serving manner, Dr. Mitchell failed to maintain the standard of practice and engaged in unprofessional conduct. Overall, Dr. Goldstein saw the post complaint text dialogue as "just a chaotic mess."

Dr. Goldstein summarized her opinion with regard to Dr. Mitchell's therapy with Patient A, as follows:

- The relationship between Dr. Mitchell and Patient A was not a healthy one.

- Dr. Mitchell did not maintain the standard of practice with respect to his management of Patient A. Dr. Mitchell did not manage communications properly, provide appropriate care or maintain professional boundaries. His verbal interactions were inappropriate. He exhibited poor judgment in continuing communication with the patient after a complaint had been filed. The modality of therapy was not appropriate and not helpful to the patient. Yelling at the patient was verbally abusive. Swearing was directed at the patient and therefore abusive. The shunning in the context of treating this patient was unhelpful and inappropriate. Dr. Mitchell's tone, sarcasm, and derogatory comments were inappropriate whether they are labeled as a therapeutic technique or not.

- Dr. Mitchell did not demonstrate the knowledge and skill necessary to be a GP psychotherapist. His judgment was lacking in many areas and the nature of Dr. Mitchell's practice is likely to expose patients to harm.

ANALYSIS

Assessment of Credibility and Reliability

The Committee is required to assess both the credibility of each witness and the reliability of their testimony. Credibility refers to a witness' sincerity and willingness to tell the truth as he or

she believes it to be. Reliability is a different concept which relates to the witness' ability to accurately observe, recall and recount events at issue.

Patient A

The Committee assessed the credibility of Patient A and the reliability of her evidence, based on her oral testimony at the hearing, her correspondence with the College in relation to her complaint as well as her clinical record compiled by Dr. Mitchell, the text messages, and the audio recordings of her therapy sessions with Dr. Mitchell.

Patient A presented as an intelligent, emotional individual, who at times used dramatic language, which appeared manipulative. She was consistent on direct examination but the Committee noted that there were inconsistencies between her oral testimony at the hearing and the information she submitted to the College in her correspondence. She acknowledged that she had made threats of violence towards Dr. Mitchell and that she harboured a tremendous amount of resentment towards him.

The Committee noted that on a number of occasions, Patient A had lied about her interactions with Dr. Mitchell. This included allegations by Patient A that Dr. Mitchell had put his hands in her panties, that she filed a police report against Dr. Mitchell, that she mailed back 20 photographs to Dr. Mitchell which she falsely claimed she had received from him, and having Dr. Mitchell's child. During her testimony at the hearing, Patient A acknowledged that these statements were not truthful. She did not defend what was clearly determined to be untrue.

Patient A presented as being both naive and manipulative at the same time. She was surprised that the College investigated Dr. Mitchell and referred the matter to the Discipline Committee. At the same time, she appeared to be quite calculating and manipulative, by threatening Dr. Mitchell through her text messaging.

This behaviour was viewed by the Committee in the context of her medical condition. The Committee recognized that Patient A came to treatment because she was ill and seeking help. In

the Committee's view, the manifestations of this illness, her attempts to cross boundaries, and manipulate the therapy, engaging in sexual transference/innuendo, her emotional instability, were all part of her mental health problem.

The Committee did not see her as a "bad patient" as Patient A had described herself, but found that this was part of the character pathology and the diagnosis that was brought to treatment, noting that this patient was ill and was ultimately seeking help. The issue is not so much of her illness but of how it was recognized and responded to.

Upon its review of Patient A's chart, the text messages and audio recordings, the Committee noted the following:

- sexual comments by Dr. Mitchell;
- Dr. Mitchell yelling and swearing at Patient A,
- Dr. Mitchell shunning and ignoring Patient A;
- Patient A being confused and not understanding the therapy;
- school homework being done in session;
- texting late in the evening;
- Dr. Mitchell's threats to terminate therapy.

The Committee found that this evidence supported some of Patient A's testimony and allegations. The Committee also noted that while often there is no corroborating evidence in cases of one-on-one patient-doctor interactions and it often comes down to "he said, she said," in this case, there is significant corroborative evidence, specifically, the detailed clinical notes, the taped sessions, and text messages.

The Committee found Patient A to be a credible witness. The inconsistencies noted by the Committee were attributed to her illness. However, the Committee could not accept Patient A's evidence as reliable, unless there was additional evidence to support her version of events, given that the nature of her illness is such that she views events which occurred through her own unique perspective.

Dr. Goldstein

The Committee found Dr. Goldstein to be a credible witness and her evidence reliable. Dr. Goldstein answered questions openly, responded in a clear and coherent manner, was well spoken, clearly addressing the questions put to her. Dr. Goldstein acknowledged that Patient A was a very difficult patient to treat. In her testimony, she did not over or under emphasize the points made. While the Committee recognized that Dr. Goldstein's practice was different from that of Dr. Mitchell's and that she did not interview either the patient who made the complaint or Dr. Mitchell, the Committee found that Dr. Goldstein was provided with sufficient information in order to form a reliable expert opinion.

Dr. Mitchell

Dr. Mitchell's testimony was at times inconsistent, and contradictory. He was loquacious and often used metaphors in responding to simple questions. The Committee had a great deal of difficulty determining the veracity of some of his testimony. In short, the Committee did not find Dr. Mitchell's testimony to be reliable. For example, he stated that the text messages were used for the purpose of booking appointments with the patient, while the documentary evidence clearly demonstrated an ongoing dialogue between Patient A and Dr. Mitchell. He explained that he skimmed these text messages to look at requests for appointment times, while the evidence clearly indicated that he was responding directly to the content of messages sent to him by Patient A.

Additionally, Dr. Mitchell stated that he never read the patient's initial letter of complaint sent to him by the College on May 23, 2013. The Committee found this astounding and unbelievable, given the seriousness of the complaint and the extensive accompanying documentation. He eventually responded to the complaint on October 4, 2013, at which point the patient had already terminated therapy with him.

Dr. Mitchell also stated that he continued to see Patient A because she had requested to see him, stating that the patient, according to his philosophy, ultimately drives and makes the decisions

about whether therapy is continued or not. Later, Dr. Mitchell acknowledged that he continued to see Patient A between the time he initially received her complaint in May 2013, until she terminated their doctor-patient relationship in September 2013 in order to "to build a record." The Committee found this contradictory. On the one hand, Dr. Mitchell stated that he continued to see the patient because it was in her interest to so do, but on the other hand, he stated that he continued to see the patient because it was ultimately in his own interest to so do. The Committee found that there was a clear self-serving element to this continued contact.

Dr. Mitchell's clinical charting of Patient A, while quite detailed, did not capture the substance of the sessions as evidenced by the three patient recorded sessions, parts of which were played to the Committee during the hearing. In the Committee's view, the recordings of the therapy sessions supported Patient A's allegations that Dr. Mitchell was rude, used profanity, was verbally abusive and interacted with her in a demeaning manner. It appeared to the Committee that throughout his testimony, Dr. Mitchell was trying to minimize and/or manipulate the evidence to align it with and correspond to his own views.

The Committee found that Dr. Mitchell's testimony demonstrated at times a marked arrogance, manipulation and inconsistency. The Committee noted a pattern of response to questioning where Dr. Mitchell would seek to change the context and content of the question being asked. He would do so by seeking clarification to a question being asked by asking his own questions, tailor the questions being asked to correspond to his point of view and then respond using his own context to do so. The Committee saw this as a way to deflect from the issue at hand and to be ultimately self-serving on the part of Dr. Mitchell. However, he couched this self-serving approach as one of seeking clarity or inferring that the question being asked arose from a source with limited knowledge. This arrogance and manipulation was noted by the Committee throughout Dr. Mitchell's testimony.

On cross-examination, Dr. Mitchell objected to answering questions based on the following:

- Questions being too generalized without specifics and therefore unanswerable;
- Questions without valid definition, for example the term "standards of care;"

- Questions being inappropriate, since the questions suggested a lack of understanding of his therapeutic principles.

The end result was that Dr. Mitchell either dismissed the question, maneuvered the question to correspond to one which he could answer, or placed such technical objections to the question that the answer was lost in the technicalities. The Committee found Dr. Mitchell to be unresponsive to the questions and evasive.

The Committee did not find that Dr. Mitchell was a credible witness, nor that his evidence was reliable.

DECISION AND REASONS

Issues

This case raises four primary issues:

1) Did Dr Mitchell fail to maintain the standard of practice of the profession by:

    (i) Failing to communicate in a professional manner including verbal abuse, shunning, swearing and threatening to terminate;
    (ii) Failing to maintain appropriate boundaries including managing transference, making sexualized comments, texting, permitting Patient A to do school homework during therapy sessions in the office and meeting Patient A outside of the office;
    (iii) Continuing “to provide care”, despite a conflict of interest after patient A had complained about his care to the College.
2) Did Dr. Mitchell engage in disgraceful, dishonourable or unprofessional conduct with Patient A. In particular, did he treat her in a disrespectful manner, fail to act in her best interest by engaging in boundary violations and persisting in a relationship where he had a conflict of interest?

3) Did Dr. Mitchell sexually abuse Patient A by making comments that are inappropriate and sexual in nature?

4) Is Dr. Mitchell incompetent in respect of the medical care he provided to Patient A?

Issue 1: Failure to Maintain the Standard of Practice of the Profession

The Committee finds that Dr. Mitchell failed to maintain the standard of practice of the profession in his care and treatment of Patient A.

The standard of practice has been defined as, "the standard which is reasonably expected of the ordinary, competent practitioner in the member's field of practice." The Committee recognizes that a finding of harm is not necessary in order to make a finding of failure to maintain the standard of practice. The Committee, however, viewed that Dr. Mitchell failed to maintain the standard of practice of the profession and that the patient was harmed.

The Committee compared the evidence of Dr. Goldstein with the testimony given by Dr. Mitchell. The Committee found that Dr. Mitchell did not refute the opinions of Dr. Goldstein that he failed to maintain the standard of practice of the profession, which the Committee accepted. While Dr. Mitchell disagreed with Dr. Goldstein's conclusions with respect to his practice, he did not provide a credible or reliable explanation of his point of view. He appeared to maneuver the data to fit his point of view, neglecting or eliminating what the Committee viewed as critical issues within the therapy or attempting to rationalize what was not rational. This included the transference/counter-transference, boundary violations, and sexual comments. Dr. Goldstein testified that Dr. Mitchell appeared to have a lack of insight into how his therapeutic technique impacted on patients, including his behaviours. In the Committee's view, Dr. Mitchell’s testimony supported this conclusion.

The Committee finds that Dr. Mitchell took a cavalier and arrogant approach to standards of care and professional conduct surrounding patient care. He rationalized or dismissed violations of the standard of care through the use of profanity, boundary violations, sexual comments, and by

taking refuge in the notion that standards of professional conduct can be broken if it is in the patient's interest. In the Committee's view, Dr. Mitchell clearly failed to maintain the standard of practice of the profession in his treatment of Patient A and acted unprofessionally with her. This included:

- failing to communicate in professional manner;
- boundary violations; and
- communicating/providing treatment to Patient A after she had filed a complaint to the College.

(i) Failing to communicate in a professional manner, including verbal abuse, shunning, swearing and threatening to terminate the doctor-patient relationship

It was clear to the Committee that Dr. Mitchell's therapeutic technique was abusive, unprofessional and a poor fit for Patient A. Dr. Goldstein expressed concerns how Dr. Mitchell's therapeutic technique could be of benefit to any patient. The recorded sessions are a shocking example of ignoring or "shunning" Patient A., verbally abusing her by yelling and swearing at her and repeatedly threatening to terminate therapy with her. His use of the vernacular included repeated use of “bullshit,” “fuck” and he went so far as to say “you suck” and that there was no hope for her. In the Committee’s view, this is a glaring example of a failure to maintain the standard of practice and the Committee so finds.

(ii) Failing to maintain appropriate boundaries including managing transference, making comments of a sexual nature, texting, permitting homework in the office and meeting Patient A outside of the office

Dr. Goldstein opined that Dr. Mitchell failed to maintain and manage boundaries with Patient A, including managing transference and counter-transference issues and making comments of a sexual nature. Dr. Mitchell does not disagree that he encouraged Patient A when she told him of her sexual fantasies about him. Dr. Mitchell also does not disagree that he made repeated references to a “sex on a stick” dress and called her a sexy coy bitch. Dr. Mitchell excuses this as

needing to make a point. The Committee does not agree and finds a failure to maintain the standard of practice.

Dr. Mitchell repeatedly took refuge in the premise that it was the patient who directed the therapy and that all of his therapeutic interventions were ultimately in the interest of the patient. The outcome of this, given the patient's illness, was perhaps predictable or as opined by Dr. Goldstein in her summation of the texting between Dr. Mitchell and the patient, "one chaotic mess." The Committee does not accept the view that standards of practice are meant to be breached by physicians as “exceptions” or that standards of practice can be adapted arbitrarily to the patient with whom they are working. Standards are not to be adapted at the whim of the therapist. There are elements of courtesy, respect and decorum, all of which are part of standards, many of which were violated in this case.

There is no dispute that Dr. Mitchell met with Patient A in a park on the grounds of a university, that she did school homework during her office visits and that he failed to set a professional tone in their therapy sessions. The Committee accepts Dr. Goldstein’s opinion that these constitute boundary violations and a failure to maintain the standard of practice. The Committee also finds that Dr. Mitchell’s therapy caused harm to Patient A, even though this is not crucial for a finding of professional misconduct.

(iii) Continuing to provide care after Patient A had complained about his care to the College, despite a conflict of interest.

Dr. Mitchell continued to provide treatment to Patient A, despite there being a clear conflict of interest after the patient had filed a complaint to the College. The Committee determined that his continued involvement with the patient after she had filed a complaint was self-serving on the part of Dr. Mitchell. He intended to build a record against the patient on the subterfuge of continuing her therapy. He admitted this was his purpose in his testimony. During this time, Patient A had other physicians who were providing care to her.

The Committee accepts Dr. Goldstein's opinion that Dr. Mitchell's behaviour constituted a failure to maintain the standard of practice. The Committee finds that Dr. Mitchell failed to maintain the standard of practice of the profession in continuing to provide care to Patient after Patient A complained to the College about his care.

Issue 2: Disgraceful Dishonourable or Unprofessional Conduct

The Committee finds that Dr. Mitchell engaged in disgraceful dishonourable or unprofessional conduct in his care and treatment of Patient A.

Dr. Mitchell verbally abused Patient A including: use of profanity; repeatedly threatening to terminate therapy; allowing and at times encouraging crossing of professional boundaries through extensive text messaging which blurred the doctor-patient relationship; and failing to properly manage transference and counter-transference. He made comments of a sexual nature. In engaging in this conduct, Dr. Mitchell disrespected Patient A and did not act in her best interest. In the view of the Committee, this constitutes disgraceful, dishonourable or unprofessional conduct as alleged.

Dr. Mitchell placed himself in a conflict of interest with Patient A when he continued to treat and communicate with her after she had made a complaint about him to the College. It should have been readily evident to him that this would be highly improper. Yet he continued to communicate with her for some months and made references, when texting with Patient A, to a professional death penalty and not being "tit for tat." In doing so, Dr. Mitchell acted in his own self-interest and not in the interest of Patient A, who was already seeing physicians for her medical care.

Issue 3: Sexual Abuse

Section 1(3) of the Code defines sexual abuse as follows:

"sexual abuse" of a patient by a member means,

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

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

The Supreme Court of Canada in *R v. Chase* (1987) stated that when determining whether (in the context of an alleged sexual assault) the conduct is of a sexual nature, the test to be applied is an objective one: "viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer?"

When determining whether Dr. Mitchell's behaviour and remarks are of a sexual nature, the Committee considered the nature of the behaviour and remarks, the situation in which it occurred, and all the circumstances surrounding the conduct.

While sexual intent may be a factor in determining whether or not conduct is of a sexual nature or character, it is not a prerequisite to a finding that conduct is of a sexual nature or character. It is one of the many factors to be considered in the circumstances.

The Committee determined that Dr. Mitchell engaged in behaviour or remarks of a sexual nature. The behavior and remarks were not appropriate to the medical services that Dr. Mitchell was providing to Patient A.

Patient A developed a sexual transference towards Dr. Mitchell. Dr. Mitchell encouraged her, telling her to enjoy her fantasies. Dr. Mitchell did not dispute this and it is recorded in the medical record of Patient A.

Dr. Mitchell introduced the term "sex on a stick" during treatment sessions to describe the patient's manner of dress and behaviour and in one session, called her a "sexy coy bitch." During

one session where Patient A brought a dress to her session with Dr. Mitchell, he suggested that she try on her "sex on a stick dress" and then suggested she did not have to try it on because it would obviously highlight her "breasts and butt." The Committee sees no therapeutic value in Dr. Mitchell's sexual remarks to Patient A and finds that they were inappropriate to the services that he was providing to Patient A.

Dr. Goldstein opined that the use of the term "sex on a stick" was a sexual comment about the patient's appearance. She opined that the exchange between Patient A and Dr. Mitchell about her dress was one where Dr. Mitchell was making sexualized comments about the patient's appearance. The Committee accepts this and finds that the evidence of Patient A, the clinical records, Dr. Mitchell's own admissions and Dr. Goldstein's opinion establish on a balance of probabilities that Dr. Mitchell made comments of a sexual nature to Patient A and therefore engaged in sexual abuse.

Issue 4: Incompetence

The Committee finds that Dr. Mitchell demonstrated a lack of knowledge, skill or judgment in his care of Patient A, and demonstrated disregard for her welfare.

In assessing the evidence, the Committee placed more weight on the expert opinion evidence of Dr. Goldstein versus the testimony of Dr. Mitchell. In particular, Dr. Goldstein made reference to the patient's diagnosis and stated that treatment should have been driven by the diagnosis. The record makes no reference to the patient having a borderline personality disorder other than as opined by psychiatric consultations completed by Dr. X in March 2010 (this consult being requested by Patient A's family doctor, not Dr Mitchell, and reassessed in September 2011).

Patient A in her testimony stated that Dr. Mitchell had told her that she did not have a diagnosis of borderline personality disorder. From a review of Dr. Mitchell's chart, one mention could be found of borderline personality disorder, this being in August 2013 after the spilled coffee incident during a session. Chronologically, this was at the end of her therapy sessions with him

which began in 2009. Dr. Mitchell did not appear to understand the nature of his patient's mental disorder that brought her to treatment.

The Committee acknowledged that Dr. Mitchell appeared to have a detailed understanding of his therapeutic technique. It was quite unclear to the Committee, however, whether he was aware that the patient continually struggled to understand and implement his technique through its five-year course. Further, the Committee saw the therapeutic technique as quite complex and was not persuaded that it was applicable to patient treatment in general or appropriate to Patient A. The Committee notes that Dr. Mitchell continues to utilize the therapeutic technique he used with Patient A with his other patients. At the hearing, he strongly defended his use of his therapeutic technique with Patient A, despite objective evidence to its harm.

While Dr. Mitchell described multiple areas of instability in Patient A, such as interpersonal relationships, emotional instability, impulsivity, problems with self-image, and identity disturbance, he did not appear to understand the patient with whom he was dealing. He appeared to focus on symptoms and implementation of his PSR approach to the exclusion of the bigger picture, i.e., to the exclusion of the diagnosis that produced the symptoms. He thereafter focused his treatment on the symptoms, while being unaware of the personality pathology that characterized the patient. The result was that the patient was not helped and reasonably believed she was harmed by Dr. Mitchell.

Dr. Mitchell repeatedly attempted to put responsibility on the patient for the problems encountered in the patient's therapy, holding fast to his therapeutic model. He appeared to take little responsibility for problems encountered in the therapeutic relationship, holding rigidly to his model of therapy. This rigid adherence to his therapeutic model appeared to blind Dr. Mitchell to some very troubling aspects of the sessions where boundary violations, transference and counter transference, and sexual comments were noted. The Committee recognizes that the therapeutic interaction between a physician and patient is one of a power imbalance. It is the responsibility of the physician to control, guide, and manage the therapeutic interaction. In the end, management of the patient's symptoms is the responsibility of the physician: it is not the responsibility of the patient. Patients come to their physician because they are ill and seek help.

The Committee finds that Dr. Mitchell's lack of knowledge, skill or judgment is of such nature that he is incompetent. The Committee finds that he poses a risk of harm to patients.

Conclusion

The Committee is aware that the burden of proof rests on the College to establish the allegations on a balance of probabilities. The Committee is satisfied, after a careful review of the evidence, submissions of counsel and advice of Independent Legal Counsel, that the College has met this burden. The evidence in this matter is clear, cogent and compelling.

The Committee finds Dr. Mitchell failed to maintain the standard of practice of the profession in his treatment of Patient A, by failing to communicate in a professional manner, including verbal abuse, shunning, swearing and threatening to terminate his medical care of Patient A; by failing to maintain appropriate boundaries, including managing transference, making sexualized comments, texting, permitting homework in the office and meeting Patient A out of the office, as well as continuing to provide care to Patient A after she had complained about his care to the College, despite a conflict of interest.

The Committee finds that Dr. Mitchell engaged in disgraceful, dishonourable or unprofessional conduct by treating Patient A in a disrespectful manner and by failing to act in her best interest by engaging in boundary violations and persisting in a relationship where he had a conflict of interest.

The Committee finds Dr. Mitchell engaged in sexual abuse of Patient A in that he made remarks of a sexual nature to Patient A.

The Committee finds that Dr. Mitchell is incompetent.

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

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Mitchell, 2018 ONCPSD 63

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. PAUL ALBERT MITCHELL

PANEL MEMBERS: **DR. MARC GABEL (Chair)**
DR. PAUL CASOLA
MR. PETER PIELSTICKER
DR. PAMELA CHART

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS A. CRANKER

COUNSEL FOR DR. MITCHELL:

MR. J. MUTTER

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

PUBLICATION BAN

Penalty Hearing Date: **September 28, 2018**
Penalty Decision Date: **September 28, 2018**
Written Reasons Date: **November 26, 2018**

PENALTY DECISION AND REASONS FOR DECISION

On June 18, 2018, the Discipline Committee found that Dr. Paul Albert Mitchel committed an act of professional misconduct, in that he has engaged in sexual abuse of a patient, in that he has failed to maintain the standard of practice of the profession; and in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. The Committee also found that Dr. Mitchell is incompetent.

On September 28, 2018, the Discipline Committee heard evidence and submissions on penalty and costs and delivered its penalty and costs order with written reasons to follow.

AGREED STATEMENT OF FACTS ON PENALTY

The following Agreed Statement of Facts on Penalty was filed as an Exhibit at the hearing:

1. On June 6, 2016, the Inquiries, Complaints and Report Committee (ICRC), further to a Registrar's Investigation into Dr. Mitchell's psychotherapy practice, issued a decision requiring that Dr. Mitchell complete a specified continuing education or remediation program (SCERP). Attached at Tab 1[to the Agreed Statement of Facts on Penalty] is a copy of the SCERP.

2. One of the requirements of the SCERP is that Dr. Mitchell practise under the guidance of a supervisor acceptable to the College for a period of six months.

3. On May 24, 2018, the ICRC referred allegations of disgraceful, dishonorable or unprofessional conduct against Dr. Mitchell to the Discipline Committee. At the time of the referral Dr. Mitchell was not practising with a supervisor as required by the SCERP.

4. An Interim Order under section 25.4 of the Health Professions Procedural Code, requiring that Dr. Mitchell practise under high-level supervision, was issued by the ICRC on June

11, 2018. Attached at Tab 2 [to the Agreed Statement of Facts on Penalty] is a copy of the Order.

5. As a result of being unable to obtain a Clinical Supervisor under the terms set out in the Order, Dr. Mitchell was required to cease to practise on June 30, 2018.

6. Dr. Mitchell has not practised since June 30, 2018.

7. On September 26, 2018, Dr. Mitchell entered into an undertaking with the College resigning his certificate of registration and agreed never to re-apply in this or any other jurisdiction. Attached at Tab 3 [to the Agreed Statement of Facts on Penalty] is a copy of this undertaking.

SUBMISSIONS ON PENALTY

Counsel for the College made a submission on penalty and costs. Dr. Mitchell's counsel did not take a position in response to the penalty submission made on behalf of the College.

Counsel for the College submitted that the penalty should include the following:

- Revocation of Dr. Mitchell's certificate of registration, effective immediately;
- An order that Dr. Mitchell appear before the panel to be reprimanded within 30 days of the date the order becomes final;
- An order that Dr. Mitchell reimburse the College for funding provided to patients under the program required under section 85.7 of the Health Professions Procedural Code, and post an irrevocable letter of credit or other security acceptable to the College to guarantee payment of such amounts, within 30 days of the date the order becoming final, in the amount of $16,060.00
- An order that Dr. Mitchell pay costs to the College, in the amount of $54,180 within 30 days of the date the order becomes final.

The Committee was informed at the beginning of the penalty hearing that Dr. Mitchell has not practised since June 30, 2018. On September 26, 2018, Dr. Mitchell entered into an undertaking with the College resigning his certificate of registration and agreeing never to apply or reapply to practise medicine in this or any other jurisdiction.

Counsel for the College submitted that the following factors are aggravating in the circumstances of this case and should be considered by the Committee in determining the penalty:

- There were multiple serious findings of professional misconduct and a finding of incompetence by the Discipline Committee made on June 18, 2018.
- Dr. Mitchell demonstrated a lack of insight into his misconduct and the effect on his patient.
- Dr. Mitchell is ungovernable.
- Dr Mitchell has a prior history with the ICRC of the College regarding his standard of practice.

The Committee is aware of the accepted principles that guide the determination of an appropriate penalty that are applicable in this case. First and foremost is protection of the public. The penalty must also provide specific deterrence to the physician and general deterrence to the profession. The penalty must reflect the profession's disapproval of the misconduct. And, the penalty must serve to maintain public confidence in the College's ability to regulate the profession in the public interest. Where appropriate, the penalty should serve to rehabilitate the member.

Aggravating and mitigating factors must be considered in the factual circumstances of the specific case.

Nature of the Misconduct

The Committee found that Dr. Mitchell's therapeutic technique harmed Patient A by the use of inappropriate comments, included the use of profanity and sexualized comments to the patient. His boundary crossing with the patient, included communication with the patient outside of the

therapy room, and texting and meeting with the patient in public even after the patient had terminated the doctor-patient relationship. This extended and exacerbated the harm to the patient.

The Committee found that Dr. Mitchell treated Patient A in a disrespectful manner, failed to act in her best interest by engaging in boundary violations, and continued the doctor-patient relationship despite a conflict of interest. Dr. Mitchell demonstrated a lack of knowledge, skill, and judgment in his care of Patient A and a disregard for her welfare. His therapeutic technique fell below the standard of practice acceptable to the profession. The manner in which he communicated with Patient A was disgraceful, dishonourable and unprofessional. Furthermore, Dr. Mitchell sexually abused Patient A by making comments of a sexual nature to her.

The Committee found that Dr. Mitchell had no insight into the harmful nature of his therapeutic process. He vigorously defended it in the face of clear, cogent evidence that it was harmful. Problems in Dr. Mitchell's psychotherapy practice date back to 2016 when the ICRC required Dr. Mitchell to complete a remediation program and practise under the guidance of a supervisor. Dr. Mitchell did not comply with the ICRC Order.

In the case of Patient A, Dr. Mitchell tried to justify his negative comments, use of profanity and sexualized comments to her. He suggested that the expert retained by the College, Dr. Goldstein, whose evidence the Committee found credible and reliable, "does not deal with reality." Dr. Mitchell blamed the patient for the breakdown in their therapeutic relationship. He continued to contact Patient A after she lodged a formal complaint against him and acknowledged that part of the reason for this was self-serving, in order to build a case against Patient A.

The Committee found Dr. Mitchell's lack of insight into the nature of his care of Patient A to be astounding. He did not appear to have learned from his behaviours through the time period he had been involved with and sanctioned by the ICRC. The Committee found that he poses a risk of harm to patients currently and in the future. He demonstrated a lack of knowledge, skill and judgment in his care of Patient A. It was the Committee’s finding that he is incompetent.

Ungovernability

Dr. Mitchell's lack of insight into the harmful nature of his therapeutic process and behaviours, manifested by continuing to rationalize and justify his behaviours, led the Committee to conclude that he is ungovernable.

Factors that inform the Committee's determination that a member is ungovernable include the following:

- the nature, duration and repetitive character of the misconduct;
- prior discipline history;
- character evidence;
- the existence, or lack, of remorse. Remorse includes a recognition and understanding of the seriousness of the misconduct;
- the degree of willingness to be governed by the professional regulator;
- medical or other evidence that explains (though does not excuse) the misconduct;
- the likelihood of future misconduct, having regard to any treatment being undertaken or other remedial efforts;
- the member's ongoing cooperation with the professional regulator in addressing the outstanding matters that are the subject of the misconduct.

The evidence on which the Committee found that Dr. Mitchell is ungovernable is not limited to his lack of insight into the harmful nature/effect of his therapeutic technique with Patient A. Dr. Mitchell was previously brought to the attention of the College in 2016 relating to his psychotherapy practice. Remediation was ordered through a SCERP and the requirement to practise under the guidance of a supervisor. Dr. Mitchell did not comply with this order. Further, his unprofessional behaviours with Patient A continued for over four years. He demonstrated to the Committee no remorse for his conduct, blaming the patient for the breakdown in the doctor-patient relationship, and insisting his therapeutic technique was continuing to be helpful to Patient A, despite clear evidence from the patient that this was not the case. He appeared to be so bound up in his own beliefs that he failed to recognize the harm that he was doing to Patient A.

This lack of insight and staunch justification of his therapeutic technique demonstrated to the Committee that he failed to recognize and understand the seriousness of his misconduct. The likelihood of future misconduct by this physician, who in the past has disregarded directives from the ICRC, further supports that he is ungovernable.

Dr. Mitchell's total and utter disregard for the College's role to protect the public makes it clear to the Committee that this is not a case where rehabilitation is possible. While remediation should always be considered, the Committee determined that Dr. Mitchell was not amenable to remediation and noted that Dr. Mitchell did not recognize the need for remediation. Given the pervasive nature of the deficiencies in Dr. Mitchell's practice, the Committee determined that he poses a serious risk to the public by the manner in which he practises medicine.

Conclusion

The Committee finds that revocation of Dr. Mitchell's certificate of registration is fair and appropriate and is the only appropriate penalty that can assuredly protect the public from potential harm. It also serves to achieve specific and general deterrence. The penalty of revocation demonstrates to the public that Dr. Mitchell's professional misconduct and incompetence, as well as his complete disregard for the College's role as a regulator, cannot be tolerated and deserves the most severe sanction of revocation. The requirement that Dr. Mitchell reimburse the College for funding provided to the patient for therapy recognizes the impact of sexual abuse on Patient A and attempts to support the patient in her rehabilitation. The reprimand serves to express the Committee's dismay and disapproval and denunciates his misconduct.

Costs

The Committee considers this is an appropriate case in which to order that Dr. Mitchell pay costs to the College for four days of hearing at the tariff rate, in the amount of $54,180.00.

ORDER

Therefore, the Committee ordered and directed on September 28, 2018, that:

1. The Registrar revoke Dr. Mitchell's certificate of registration effective immediately.

2. Dr. Mitchell appear before the panel to be reprimanded within thirty (30) days of the Order becoming final.

3. Dr. Mitchell reimburse the College for funding provided to patients under the program required under section 85.7 of the Health Professions Procedural Code, and shall post an irrevocable letter of credit or other security acceptable to the College to guarantee payment of such amounts within thirty (30) days of the Order becoming final, in the amount of $16,060.00.

4. Dr. Mitchell pay costs to the College in the amount of $54,180.00 within thirty (30) days of the date of this Order.

TEXT of PUBLIC REPRIMAND
Delivered October 23, 2018
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. PAUL ALBERT MITCHELL

Dr Mitchell,

This Committee has found that you committed a myriad of behaviours which has made you unfit to be a member of the medical profession.

You failed to maintain the standard of the profession in your work as a medical psychotherapist. You disregarded well accepted standards and in doing so caused harm to your patient.

Your behaviour with the patient was disgraceful dishonourable and unprofessional in the unacceptable way you communicated with her, in the words and actions directed toward her and in crossing well accepted boundaries with her.

Your remarks to her were sexually abusive and could serve no therapeutic purpose. This was demeaning and showed a lack of care and knowledge of fundamental ways of interaction.

It is manifestly apparent that you are incompetent as you demonstrated a lack of knowledge, skill and judgement in your care of this patient, as well as a demonstrated disregard for her welfare.

Your actions were not in the patient's interest but were self-serving for your own needs and ends.

We express by this public reprimand, the profession's and the public's condemnation of your egregious behaviour that has brought dishonour upon you.