NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Sammy Joe Sliwin, this is notice that no person shall publish or broadcast the identity and any information that would disclose the identity of the sexual misconduct witness under subsection 47 of the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

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: Sliwin, S.J. (Re)

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. SAMMY JOE SLIWIN

PANEL MEMBERS:

DR. J WATTS (Chair)

D. DOHERTY
DR. M. DAVIE
DR. E. ATTIA (Ph.D.)
DR. W. KING

Hearing Dates on Finding:	May 7 to 11, June 6 to 8, 18 to 22, 2012
Decision Date:	September 11, 2013
Release of Reasons on Finding:	September 11, 2013
Penalty Hearing & Motion Date:	June 13, 2014
Penalty & Motion Decision Date:	April 1, 2015
Release of Written Reasons:	April 1, 2015
Decision Date on Costs:	February 1, 2016
Release of Written Reasons on Costs:	February 1, 2016

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the "Committee") of the College of Physicians and Surgeons heard at Toronto a motion to stay the proceedings on May 7 to 11, 2012, and the hearing on the merits and a renewed motion to stay the proceedings on June 6 to 8, and 18 to 22, 2012. At the conclusion of the hearing, the Committee reserved its decision on finding and its decision on the renewed motion to stay the proceeding. The decision on the renewed motion to stay the proceedings is stated below; the reasons for the decision on the stay motion will be delivered separately. The decision and reasons on finding are set out below.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Sammy Joe Sliwin committed an act of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*("O. Reg. 856/93"), in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and

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 a patient.

RESPONSE TO ALLEGATIONS

Dr. Sliwin denied the allegations of professional misconduct in the Notice of Hearing.

OVERVIEW OF THE ISSUES

The allegations in this case arise from the alleged conduct of Dr. Sliwin in relation to Ms A, who was both his employee and patient.

With respect to the allegation of sexual abuse, subsection 1(3) of the Code defines sexual abuse of a patient by a member as:

a) sexual intercourse or other forms of 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*.

[Emphasis added]

It is not disputed that Dr. Sliwin and Ms A engaged in the sexual acts that are captured by subparagraph 1(3)(a) of the Code. However, as emphasized, to fall within the meaning of sexual abuse as defined in the legislation, the Discipline Committee must find that the sexual relationship was concurrent with the doctor-patient relationship. If the sexual relationship was not with a patient or was not concurrent with the doctor-patient relationship, the allegation of sexual abuse will be dismissed.

Therefore, this case raises the following issues:

1. Was there a doctor-patient relationship between Dr. Sliwin and Ms A?
2. If so, was there a concurrent sexual relationship?
3. If so, did the legal doctrine of "Officially Induced Error" provide a defence to the allegation of sexual abuse?
4. Would the conduct of Dr. Sliwin with Ms A be reasonably regarded by members as disgraceful, dishonourable or unprofessional?

THE EVIDENCE

The Committee heard testimony at the hearing from the complainant, Ms A, the member, Dr. Sammy Joe Sliwin, and two College investigators, Mr. B and Mr. C. Where evidence

was in relation to the abuse of process motion, it is dealt with separately by the Committee.

THE FACTS

Background

Employment Relationship 1992 to 1998, 2002 to 2005, and 2006 to 2008

The evidence was, for the most part, not in dispute. Ms A was a 29-year-old, married mother of two when she first met Dr. Sliwin (also married and a father) in February of 1988. She and her spouse attended a birthday party and were introduced to the Sliwins by mutual friends, who lived in the same neighborhood.

Ms A had worked until her second child was born. She testified that in the early 1990s, her husband's business was struggling and he encouraged her to go back to work. Dr. Sliwin was in the process of starting up a private cosmetic surgery facility and she applied for, and received, a job as his receptionist in 1992. Her job initially included such duties as answering the telephone, filing, making appointments and mailing out announcements, but she gradually took on more responsible jobs under the supervision of the office manager (who worked three days per week). She continued in this position until 1995. She described her working relationship with Dr. Sliwin during this period as "not very good." She testified that he was hard on her, made her feel incompetent and had little patience with her learning process.

The Committee heard testimony that in 1995, Ms A was having child care issues and thought that she would be better off staying at home with her children. Nanny costs were, in any case, consuming most of her salary. She remained at home until 1997, at which time she took a position in the office of two family practitioners.

In November 2000, having heard that Dr. Sliwin's previous office manager had left, she applied for the position and was accepted. The office manager position carried greater responsibility and paid a better salary than she had previously received. Among her responsibilities were staffing, ordering supplies and completion of hospital paperwork.

A typical work week would consist of:

- Monday: The whole day would be spent at Dr. Sliwin's private facility ("the Clinic") where she would perform managerial duties while Dr. Sliwin did cosmetic surgery.
- Tuesday: The morning would be spent at Dr. Sliwin's other office ("Office 2") and the afternoon at the Clinic for consultations, discussion of procedures and postoperative care. Ms A would accompany Dr. Sliwin when he was at each office, frequently traveling together and having lunch together. Starting in 2002, surgery might be performed by other surgeons at the Institute on this day.
- Wednesday: Dr. Sliwin was at Hospital X; she was at the Clinic.
- Thursday: Dr. Sliwin was at Hospital X. One to two times per month, there would be an evening office at Office 2.
- Friday: was a repeat of Monday.

Their employer/employee relationship remained much the same until November 2005 when, for reasons related to their personal relationship (discussed in more detail below), she left his employ. She regretted her decision and asked to be taken back, but Dr. Sliwin was unable/unwilling to rehire her. She got a job working for another plastic surgeon but at a reduced salary.

In March, 2006, she resumed working at his office to earn extra income, doing typing after hours. This employment continued into 2008, but all contact ended when she filed a civil lawsuit against him.

The Committee heard evidence that Dr. Sliwin was a generous employer, giving Ms A presents on special occasions and frequent gifts of cash averaging, in her estimation, $500-$1000, sometimes weekly and at other times less frequently. Ms A testified that "he was trying to help me out."

In addition, the Committee accepted in evidence a series of birthday cards (and one Valentine's Day card), marked as Exhibit 7, covering the years 2001 to 2008, given by Dr. Sliwin to Ms A.

Surgeries and Treatment 1990s and 2001 to 2008

Ms A was a patient of Dr. Sliwin for a number of surgeries over an extended time period.

In December of 1992, Dr. Sliwin performed surgery on Ms A's right ear (a setback otoplasty). The surgery was performed free of charge. She described it as a "Christmas present" and as a "trial run" of the operating room which had not yet been opened to the public.

Approximately two years later, a minor revision of the ear surgery was required and Dr. Sliwin performed it.

Medical records from this era are no longer available and were not part of the package of medical records entered as Exhibit 17.

In January 1997, while no longer Dr. Sliwin's employee, Ms A saw Dr. Sliwin for a consultation concerning her suitability for laser refinishing of her lower eyelids but was advised that she was not suitable for this procedure and would require, instead, a surgical blepharoplasty (cosmetic eyelid surgery). She elected not to proceed with the surgery at that time.

On March 16, 2001, Dr. Sliwin performed bilateral augmentation mammoplasty (breast enlargement surgery) on Ms A under general anesthesia at his private facility, the Clinic.

On March 8, 2002, Dr. Sliwin performed bilateral lower blepharoplasty on Ms A under local and neurolept anesthesia ("twilight sleep") at the Clinic.

On June 21, 2002, Dr. Sliwin gave Ms A two different filler injections in her upper lip.

On April 8, 2004, Dr. Sliwin performed bilateral capsulotomies (release of scar tissue related to previous breast implants) and replacement of the saline implants with gel implants under general anesthesia at Hospital X.

On June 29, 2007, Dr. Sliwin performed a facelift on Ms A under general anesthesia at the Clinic.

On August 13, 2008, Dr. Sliwin performed a capsulotomy and replacement of the right breast implant under general anesthesia at Hospital X.

The Committee heard testimony that no charge was made to Ms A for any of the surgeries (although those performed in hospital would have been covered as an OHIP benefit) and that Dr. Sliwin, in addition, assumed the cost of paying the anesthetist and other OR personnel.

The temporal relation of these surgeries to the social, employer/employee and sexual relationships between Dr. Sliwin and Ms A will be explored in more detail below.

The Committee also received documentary evidence that Dr. Sliwin made medical referrals for Ms A, ordered laboratory tests and x-rays for Ms A, and prescribed medications on a number of occasions for Ms A, although he was not her family doctor.

The records for Ms A indicate a rash on October 9, 2001 and Dr. Sliwin notes eczema. Dr. Sliwin testified that he would have been handed the chart because other staff did not know that they were having an affair but OHIP was not billed.

Sexual Relationship 2001 to 2007

Concerning their personal relationship, Ms A testified that when she returned to Dr. Sliwin's office in November 2000, she found the general atmosphere much lighter and less intimidating. Dr. Sliwin seemed to be more easy-going and would spend more time

in the office than he had done in the early ‘90s and would socialize, or even flirt, with the office staff on occasions. She described the atmosphere of the office as different, less professional than when she had worked there before.

Their commutes to Office 2 afforded time for personal conversation, which sometimes extended to a discussion of their personal lives and problems.

Ms A testified that she had suspected Dr. Sliwin of having an affair with the receptionist and brought up the subject during one of their conversations. Dr. Sliwin denied the relationship, stating that he found *her* to be more attractive. This statement took Ms A by surprise and seemed to introduce a more flirtatious tone to their conversations, which she described as "like high school".

Dr. Sliwin testified that after one evening office, he had offered to drive Ms A home. The subject of extramarital affairs came up in their conversation and both agreed that they were a bad idea. As she was getting out of the car, Ms A said something akin to, "then I guess we can't have an affair". Dr. Sliwin testified that he was taken aback and that he had not previously considered the possibility. However, the sexual tension between them increased following this occasion.

Ms A testified that the relationship became sexual, by mutual consent, following an evening at Office 2. Both testified that they "fell into each other's arms." In his response to the College following Ms A's complaint, Dr. Sliwin had depicted Ms A as the sexual aggressor, but he testified at the hearing that the letter had been written in anger.

Ms A was quite definite about the date on which they first had sex, that being March 8, 2001. She stated that she always remembered it and, years later, when she had to change the PIN number of her bank card, she changed it to 0308. In his evidence, Dr. Sliwin was less certain of the date of their first sexual encounter and thought that it might have been in February. He admitted that he had no contemporaneous record to bolster his memory. Although both testified that they regarded this event as a "one-time thing," their mutual sexual attraction remained strong. Dr. Sliwin recalled their having sex at the office again

two weeks later and that "she brought a blanket." He thought March 8th was the second, not the first, sexual encounter.

Ms A kept a "diary" of their sexual relations by making a dot with a felt pen at the appropriate date on the Milk Calendar. She stated that she was very discreet and never told anyone the meaning of the symbol. She retained these calendars and the ones for 2002, 2003, 2004, 2006 and 2007 were introduced into evidence; those for 2001 and 2005 could not be found. The Committee accepted the testimony of Ms A that she kept a contemporaneous and accurate record of their sexual relations in the manner she described. The Committee found Ms A to be a credible witness, straight forward and consistent in her testimony. Where that record conflicted with the testimony of Dr. Sliwin, the Committee accepted her evidence over that of Dr. Sliwin, whose memory the Committee found was not reliable on the dates of their sexual encounters.

Ms A underwent augmentation mammoplasty by Dr. Sliwin on March 16, 2001, under general anesthesia. She testified that she had been thinking for a long time about having the surgery and, when a patient who had been booked for that date cancelled two days prior to surgery, she telephoned Dr. Sliwin to ask if she could take that slot. He replied that they needed to talk about it further.

The conversation took place that same evening at the Clinic. In addition to the medical consultation and the discussion of risks which would have taken place with any patient, Ms A testified that Dr. Sliwin said something to the effect that, "If you do this, then I can't be your lover anymore." Dr. Sliwin left her to make the choice and she opted to go ahead with the surgery. The usual measurement and ordering of implants took place and she proceeded with routine blood work and ECG. The surgery proceeded without incident.

A minimal fee for the surgery was discussed but Ms A could not recall whether the payroll deductions, which they had discussed, ever took place.

Their sexual relationship resumed following the surgery. Ms A recalled that it resumed about two weeks after the surgery, in March or April. Dr. Sliwin recalled it to have resumed in April.

No calendar is available that documents the frequency of their sex in 2001. Dr. Sliwin testified that it was "very intermittent". Ms A testified that "It happened a few times after my surgery …… frequently on a Tuesday." On another occasion, she testified that sex would occur "two or three times a week, sometimes it was two or three times a month, and sometimes there were - rarely there were months when there was nothing." What was not in contention was that sex resumed and continued in 2001.

As subsequently discussed, Dr. Sliwin testified that his usual practice is to have follow-up appointments at one week, two weeks and then one month later. The chart records a post-operative appointment on March 20, 2001, four days post-surgery, noting some bruising and breast massage. Regarding the second appointment for removal of stitches, there is no note. Dr. Sliwin has no recollection of examining her at the second appointment although testified that there must have been an appointment. He also testified that he may have, or may not have, examined Ms A a month after the first two post-operative appointments. On Dr. Sliwin's own evidence that the sex resumed in April of 2001, the Committee finds that this would have been during the post-operative treatment period.

Even where steps taken by Dr. Sliwin or his staff in the pre- or post-operative treatment periods are not recorded in his clinical records, such as when he may have examined the patient informally, he was still her physician during the treatment period.

The 2002 calendar documents no sexual encounters during the first eight months of the year (during which time the blepharoplasty was performed on March 8). Sex is documented in September, October and November, 2002.

Beginning in February 2003, Ms A's calendars document sex with an average frequency of perhaps three to four encounters per month throughout 2003 and 2004, although gaps

are present. The capsulotomy and implant replacement took place on April 8, 2004; the calendar documents sex on April 6, 13 and 15, 2004. The requisition for implants was filled out on February 11, 2004, risks and benefits explained on March 31 and consent signed on April 1, 2004, and Dr. Sliwin testified that a physical examination was conducted between March 31 and April 5, 2004. The Committee finds that sex took place during the pre-operative and post-operative treatment period for this surgery.

The 2005 calendar is missing but the Committee heard testimony that the sexual relationship was ongoing. No surgeries took place in 2005, although Dr. Sliwin gave Botox treatments to Ms A in May 2005.

The sexual relationship continued in 2006 and in the first nine months of 2007, with decreasing frequency. The facelift was performed on June 29, 2007 and the calendar documents sexual encounters on June 27 and July 23, 2007. In the view of the Committee, the sexual encounters were in the pre-operative and post-operative treatment period.

The Committee heard that the sexual relationship had ended prior to the time of the implant replacement on August 13, 2008.

In early 2002, Ms A was diagnosed with genital herpes. She testified that she had no other sexual partners and did not think that her husband had either. Dr. Sliwin was found subsequently to be an asymptomatic carrier of type I herpes. For a time after her diagnosis, they used condoms for protection, but she testified that "this didn't last." While their attraction for each other remained strong, they were in no sense family or even "a couple". They did not go out on "dates" and avoided being seen together in public. Their encounters occurred almost exclusively in the office.

Dr. Sliwin was candid that he concealed their relationship from his wife, even during a brief period of time when he had left his home, until he received a demand letter in 2008. He testified that it was never his intention to encourage Ms A in the belief that he

intended to leave his wife in order to marry her. She was clearly not of a like mind and testified that she was "crazy about him".

Ms A left her marriage in 2002 and she and her husband were divorced sometime thereafter. Dr. Sliwin remains married.

In late summer of 2005, Dr. Sliwin appeared, at least in Ms A's estimation, to be contemplating leaving his wife. He moved out of their home and rented an apartment. Ms A testified that their relationship seemed more normal during this period and that she did not feel as "just a mistress". However, after a month, he moved back in with his wife. This was particularly upsetting to Ms A as she heard about it through third parties, rather than from him.

In November 2005, while on vacation in another province, Ms A testified that she decided to leave her job. She had clearly contemplated some such action as she had helped herself to cash in the amount of several thousand dollars, which was kept in a "deadman's fund" in a drawer in Dr. Sliwin's office. She testified that she "wanted to make him mad." Dr. Sliwin testified that he told his wife he had fired her (for reasons unspecified). Despite this, he gave her a generous severance package. When she resumed working for him in March 2006, doing typing after hours, their periodic sexual encounters became even more clandestine, usually occurring when he visited the office after hours.

Ms A testified that their relationship “ended badly.” At their final encounter in September 2007, she felt that he had been abusive and cold. Although she continued typing for Dr. Sliwin for several months, she did not interact with Dr. Sliwin in person.

In 2008, on the advice of a lawyer friend, she launched a civil lawsuit against Dr. Sliwin. When asked why, she testified that, in her perception, Dr. Sliwin had carried on as if nothing had happened, whereas she had been "completely destroyed" by the failure of their relationship. She stated that she "felt he should be made to realize [what he had

done].” The suit was eventually settled. On the advice of her civil litigators, she also filed a complaint with the College, which eventually resulted in allegations being brought before the Discipline Committee.

Dr. Sliwin’s Typical Practice with Patients and with Ms A

Dr. Sliwin was questioned extensively, both on direct and cross-examination, concerning the nature of the doctor/patient relationship, particularly with respect to its timing. He testified that a typical patient (for example, coming for breast augmentation surgery) would probably have seen educational videos prior to the initial 30 to 45 minute consultation, during which sizing would be carried out and there would be a discussion of the risks of surgery. If the patient had already determined that she wanted to go ahead with surgery, the paperwork and preoperative questionnaire might be completed at that appointment. Typically, a second appointment would be scheduled for signing of the formal consent to surgery, ordering of preoperative blood work and giving out of patient information and prescriptions for postoperative medication. On the day of surgery, Dr. Sliwin would see the patient again to do photographs and mark the operative areas. He typically visits briefly in the recovery area to ensure that all is well. Patients are usually assessed within the week and then return a week later for removal of sutures and are asked to return one month later for follow-up. He testified that approximately 60% do. He also testified that he has an "open door policy" and that patients are invited to call him and may return as late as a year later for reassessment.

Dr. Sliwin was asked whether it was common practice for plastic surgeons to perform surgery on their employees, either gratis or at reduced rates. He testified that it was common practice and that he had operated on other employees besides Ms A. He testified that his obligations to the patient are the same whether the patient is a stranger, a friend or an employee. During cross-examination, he was taken through Ms A's medical record and agreed with suggestions that in each case the records reflected standard procedure, with consultation, workup, operative procedure and follow-up similar to that followed for any other patient. The sole exception was that, as he saw her nearly every day in the office,

follow-up might be, in some instances, informal, particularly if the operative area was visible without the need to undress.

He was asked whether a particular obligation, such as the need to perform a physical examination or to obtain informed consent, was the same despite their having a sexual relationship, and he agreed that it was.

FINDINGS

The Committee recognizes that the College has the onus of proving the allegations against Dr. Sliwin, and that the standard of proof is on the balance of probabilities. The allegations must be proven with evidence that is clear, cogent and convincing: *F. H. v McDougall,* [2008] 3 S.C.R. 41.

The Committee finds that Dr. Sliwin committed an act of professional misconduct by having a sexual relationship with his patient, Ms A, during the currency of a doctor-patient relationship. This sexual relationship, which included sexual intercourse, constitutes sexual abuse of a patient under section 51(1)(b.1) of the Code.

The Committee also finds that Dr. Sliwin committed an act of professional misconduct under paragraph 1(1)33 of O.Reg. 856/93 made under the *Medicine Act,* 1991, in that he engaged in conduct relevant to the practice of medicine that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.

REASONS FOR DECISION ON FINDING

Defence counsel submitted that there were at least three grounds on which it should be found that Dr. Sliwin did not commit the acts of misconduct alleged or, at least, not to have committed an act of sexual abuse. They are that:

i. Ms A should not be considered a "patient" of Dr. Sliwin at relevant time periods;
ii. there was no concurrency between the doctor/patient and sexual relationships; and
iii. even if the Committee found that sexual abuse had occurred, Dr. Sliwin should be excused under the defence of Officially Induced Error.

Issue 1 - Was there a doctor-patient relationship between Dr. Sliwin and Ms A?

The Committee finds that there was a doctor-patient relationship between Dr. Sliwin and Ms A at relevant time periods. Ms A was described by defence counsel as a "sophisticated consumer" of cosmetic surgeries who should not be considered vulnerable in the usual sense. Furthermore, she did not consider herself to have been sexually abused (albeit in ignorance of the legal definition of sexual abuse) and she had communicated to the College that their relationship had been consensual.

The Committee rejected the defence that Ms A was not in a doctor-patient relationship with Dr. Sliwin, or that her “sophistication” in returning for more and more cosmetic surgery put her in any category other than a patient, or that her view of her relationship with him as “consensual” somehow changed her status as a patient. Courts have accepted that there is a power imbalance between a doctor and patient so that no sexual relationship between a doctor and patient can ever be truly consensual.

In *Leering v. College of Chiropractors (Ontario)*, 2010 CarswellOnt 568, the Court of Appeal said:

> “The Divisional Court correctly identified the purpose of these provisions of the Code, which is to prevent a health care professional from being in a position to use the power imbalance between a doctor and patient to obtain

> consent to sexual activity. However, the offence is complete when a doctor is in a sexual relationship with a patient, regardless of whether there was any power imbalance in the particular case, and whether it was used in fact to obtain consent to sex."

Issue 2 – Was there a sexual relationship concurrent with the doctor-patient relationship?

The Committee rejects the defence of lack of concurrency.

The Committee finds that it has been clearly established that a concurrent doctor/patient and sexual relationship existed between Dr. Sliwin and Ms A. Sexual relations between them took place, albeit intermittently, between 2001 and 2007. During that same time period, Dr. Sliwin was Ms A's doctor and performed a number of surgeries, including major surgeries under general anesthesia. Having regard to the pre-operative and post-operative periods for such surgeries, the Committee concludes that the concurrency of the doctor-patient and sexual relationships grounds a finding of sexual abuse.

While the testimony of both Ms A and Dr. Sliwin established that there were gaps in their sexual relationship (it was described as "on and off"), the Committee finds that the sex between them continued with regularity over a period of several years and that there were multiple surgical procedures in the same time period. The Committee finds that sex occurred in close proximity to Ms A's surgical procedures on more than one occasion, and certainly within the time frame of the treatment period. It is clear that a doctor-patient relationship between a surgeon and patient includes a time period for assessment and treatment pre- and post-surgery. It is not limited to the day of surgery. The Committee determined that the doctor-patient and sexual relationship was concurrent on the facts of this case in the pre-operative and post-operative treatment period. This period includes a sufficient period of time before surgery for consultation, requisition for devices, assessment (history and physical, blood work, ECG, x-rays), consent, and after surgery for assessment of complications, suture removal, wound healing, and (on Dr. Sliwin's evidence) up to one year or longer for assessment of the scar and development of any deformity.

Although the Committee focused on and found as a fact that Dr. Sliwin had sex with his patient Ms A during the treatment period for a number of surgeries, despite his denials, there is an evidentiary basis for a finding that Dr. Sliwin was her doctor throughout the period from March 14/15, 2001 through 2008, the period when she returned to him repeatedly for various procedures. Dr. Sliwin had been Ms A's doctor even before the start of their sexual relationship. After the March 16, 2001 surgery, Dr. Sliwin chose to continue their sexual relationship, while performing intermittently the various surgical procedures she requested over the following years. As a physician, he should not have continued to perform surgeries on her, while maintaining a sexual relationship. In so doing, the Committee finds that Dr. Sliwin has engaged in sexual abuse of a patient, as Ms A was his patient in the specified period. In the Committee's view, sex with her in that period in the circumstances also constitutes sexual abuse.

It was clear on the evidence that Ms A considered Dr. Sliwin her surgeon throughout the time period of their relationship, and Dr. Sliwin recognized that she did so. Dr. Sliwin testified that Ms A trusted him and always wanted him to do the surgeries.

Issue 3 - Does the legal doctrine of "Officially Induced Error" provide a defence to the allegation of sexual abuse?

In order to make a defence of Officially Induced Error, the law placed before the Committee indicated that a number of elements must be satisfied. While not exactly analogous to the present situation, these criteria were set out in a straightforward fashion (in the criminal context) by Justice Pringle in *R. v. Croswell.* At paragraph 14, he wrote that in order to make out this defence, the defendant must show that:

1) he considered the legal consequences of his actions and sought legal advice;
2) the advice was obtained from an appropriate official;
3) the advice was erroneous;
4) he relied on it; and
5) his reliance was reasonable.

In this case, it was argued that the "appropriate official" is the College of Physicians and Surgeons. The "advice" consisted of periodic publications of College policies and summaries of discipline cases published in Members' Dialogue, as interpreted by Dr. Sliwin. Dr. Sliwin conceded in his testimony that he made no attempt to confirm his interpretation with any official of the College, by contacting the CMPA or by seeking legal advice. Therefore, to the extent there was any reliance, it was on his own interpretation, rather than on advice that he sought and relied upon. The Committee did not accept that there was reliance by Dr. Sliwin on "advice" from the College that justified his conduct.

The defence of Officially Induced Error also fails, in the opinion of the Committee, on the fifth criteria of reasonableness. Exhibit #25, Tab, 1, contains the CPSO policy on "Physician-Patient Dating", which Dr. Sliwin testified he consulted when he was seeking guidance as to whether he could resume a sexual relationship with Ms A having performed her breast augmentation surgery. This policy of the College is not ambiguous. The policy's very first provision, passed by the Council of the College in May, 1992, reads, "sexual relationships between doctors and patients during treatment are prohibited." The prohibition against sexual relationships between doctors and patients during treatment cannot be reasonably interpreted for surgeons to mean only the dates on which surgery takes place. Treatment is a broader medical concept that includes the pre-operative and post-operative steps to assess and provide medical services to a patient before and after surgery as described above.

With regard to the argument that Dr. Sliwin was in a "spousal relationship" with Ms A, this is not a reasonable interpretation of the policy, it is not relevant in light of the case law and in any event, it is not supportable on the facts as found by the Committee. Dr. Sliwin's view that his conduct somehow fell within the College policy about not treating self or family members, except for minor or emergencies conditions, is without merit. Ms A was not a family member or a "spouse" when Dr. Sliwin decided to continue having sex with her after the bilateral augmentation mammoplasty of March 16, 2001.

Furthermore, this and the subsequent surgeries he performed on her were neither minor matters, nor emergencies.

Dr. Sliwin knew that what he was doing was wrong. He told Ms A at one point that he could not be her doctor if they had a sexual relationship. Dr. Sliwin engaged in conduct that under the Code constituted sexual abuse of a patient. The Committee did not accept that there was erroneous advice from the College or that he reasonably relied on erroneous advice.

Issue 4 - Would the conduct of Dr. Sliwin be reasonably regarded by members as disgraceful, dishonourable or unprofessional?

To maintain a doctor-patient relationship with Ms A while engaging in a sexual relationship in the same time period, knowing it to be wrong, disregards the well understood principle that this is not in a patient's best interest and violates the clear prohibition of the College against such conduct.

A physician has the responsibility to maintain proper boundaries between the professional and personal with patients. Good medical care depends on this. It is unprofessional for a physician to leave it to the patient to establish proper boundaries. Dr. Sliwin failed to maintain proper boundaries with Ms A over the long period he was her physician.

Renewed Motion to Stay the Proceedings

The Committee dismisses the renewed motion to stay the proceedings. Reasons for that decision will be delivered separately.

CONCLUSION

The Committee finds that Dr. Sliwin allowed his feelings for Ms A to overcome his better judgment and that he engaged in the sexual abuse of a patient by his sexual relationship with her during the currency of their doctor-patient relationship. The Committee also finds that his conduct, relevant to the practice of medicine, would reasonably be regarded

by members as disgraceful, dishonourable and unprofessional. In both respects, Dr. Sliwin committed an act of professional misconduct.

PENALTY DECISION AND REASONS and ORDER AND REASONS ON CONSTITUIONAL MOTION

The Discipline Committee of the College of Physicians and Surgeons of Ontario delivered its written decision and reasons on finding in this matter on September 11, 2013, and found that Dr. Sammy Joe Sliwin committed an act of professional misconduct, in that he sexually abused a patient, 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.

On June 13, 2014, the Discipline Committee conducted the penalty hearing in this matter, and heard a constitutional motion brought by counsel for Dr. Sliwin asking the Discipline Committee to find that the mandatory revocation provisions of the Health Professions Procedural Code (the Code), as applied to Dr. Sliwin, are unconstitutional. By this constitutional motion, Dr. Sliwin sought an order that the mandatory penalty provisions are contrary to the Charter of Rights and to the extent that they are unconstitutional, they are of no force and effect and do not apply to Dr. Sliwin. The Committee therefore was obliged to consider its decision on penalty in this case in the context of the constitutional issues raised that have to be decided.

JURISDICTION

The Discipline Committee accepts that, as is the case with other administrative tribunals, it has the authority and duty to decide questions of law, including Charter issues.

Materials Filed on the Motion

Voluminous written materials were filed on the constitutional motion before the Discipline Committee. An extensive motion record on the constitutional question was filed on behalf of Dr. Sliwin. A responding motion record was filed on behalf of the

College, together with a Brief of Legislative Evidence on the Constitutional Question. That Brief included the Final Report of the Task Force on Sexual Abuse of Patients and various legislative materials and reports of debates of the Legislative Assembly of Ontario (Hansard). In addition, counsel for Dr. Sliwin filed a 47 page factum with 125 paragraphs of written argument and 66 footnoted citations. Counsel for the College filed a 53 page factum with 153 paragraphs of written argument and 123 footnotes. The parties filed multiple volumes of case authorities, which included many important and lengthy constitutional cases from the Supreme Court of Canada and from appeal courts across Canada. The Committee also had the benefit of hearing full oral submissions from counsel for the parties. In coming to its decision on penalty, the Committee considered carefully the constitutional arguments made by the parties.

THE LEGISLATION

The mandatory revocation provisions of the Code challenged by Dr. Sliwin are sections 1(3), 51 (5)(2), and 72 (3)(a) ("the mandatory revocation provisions"). These provisions state:

> **Sexual abuse of a patient**
> 1 (3) In this Code,
>
> "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.
>
> **Statement of purpose, sexual abuse provisions**
>
> 1.1 The purpose of the provisions of this Code with respect to sexual abuse of patients by members is to encourage the reporting of such abuse, to provide funding for therapy and counselling for patients who have been sexually abused by members and, ultimately, to eradicate the sexual abuse of patients by members.
>
> **Professional misconduct**
>
> 51.(1) A panel shall find that a member has committed an act of professional misconduct if,

…

(b.1) the member has sexually abused a patient; …

…

Orders relating to sexual abuse

[51](5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

…

2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following,
   i. sexual intercourse,
   ii. genital to genital, genital to anal, oral to genital, or oral to anal contact,
   iii. masturbation of the member by, or in the presence of, the patient,
   iv. masturbation of the patient by the member,
   v. encouragement of the patient by the member to masturbate in the presence of the member. 1993, c. 37, s. 14 (3)

Time of application, sexual abuse cases

72 (3) An application under subsection (1) [for reinstatement], in relation to a revocation for sexual abuse of a patient, shall not be made earlier than,

(a) five years after the date on which the certificate of registration was revoked

…

The Discipline Committee is required by statute to make an order of revocation of the certificate of registration of Dr. Sliwin as the penalty for its finding of sexual abuse in this case, unless it is persuaded that the mandatory revocation provisions do not apply or are unconstitutional for being contrary to the Charter of Rights, which is submitted on behalf of Dr. Sliwin.

LEGAL ISSUES

Dr. Sliwin made the following arguments:

(1) In what was described as “the interpretive argument”, it was submitted that the mandatory revocation regime was never meant to apply to pre-existing relationships.
(2) In the Charter argument, it was submitted that the mandatory revocation regime infringes sections 7 and 15 of the Charter, and these infringements cannot be justified under section 1 of the Charter.

ANALYSIS

The Interpretive Argument

Counsel for Dr. Sliwin reviewed three leading cases of the Court of Appeal, *Mussani v College of Physicians of Ontari*o (2004), 74 O.R. (3d) 1; *Rosenberg v College of Physicians of Ontario* (2006), 275 D.L.R. (4th) 275; and *Leering v College of Physicians of Ontario* (2010), 98 O.R. (3d) 561, and argued that the mandatory revocation provisions under the Code were not intended to apply to pre-existing relationships. Counsel for Dr. Sliwin submitted that concern about the exploitation of the power dynamic between doctors and their patients does not arise where the personal relationship pre-dated the doctor-patient relationship.

The Discipline Committee concluded that this argument was an attempt to re-litigate findings in the Court of Appeal in the above cases, which bind this Committee. Firstly, the Court of Appeal held that the mandatory revocation provisions in the Code for sexual abuse are constitutionally valid. Secondly, the Court of Appeal held that the mandatory revocation provisions applied in all cases where the sexual acts took place concurrently with the doctor-patient relationship. There was no exception carved out for pre-existing relationships.

The Court of Appeal made the following statement in *Mussani,* in addressing the challenge to the constitutional validity of the mandatory revocation provisions, at paragraph 41:

> "The weight of authority is that there is no constitutional right to practise a profession unfettered by the applicable rules and standards which regulate that profession."

And at paragraph 43:

> "I am satisfied, therefore, that there is no constitutionally protected right to practice a profession, and that the mandatory revocation of a health professional's certificate of registration in substance infringes an economic interest of the sort that is not protected by the Charter."

The Court of Appeal in *Rosenberg* stated the following regarding the interpretation of the mandatory revocation provisions, at paragraph 25:

> "The legislation, like the Task Force recommendations, is clear and unambiguous: when it comes to sexual relations between a doctor and a patient, there is a black letter, bright line prohibitions with a drastic sanction and no exceptions or exemptions. The zero tolerance policy precludes inquiry into any explanation or excuse for the sexual activity. A patient's consent is irrelevant."

The Court of Appeal in *Leering* said, as follows, at paragraph 37:

> "The disciplinary offence of sexual abuse is defined in the Code for the purpose of these proceedings as the concurrence of a sexual relationship and a health care professional-patient relationship. There is no further inquiry once these two factual determinations have been made."

As a preliminary matter, the Committee notes that the factual basis for Dr. Sliwin's argument on this first issue does not hold. As the Committee found in its decision on finding, Dr. Sliwin had sex with his patient Ms A during the currency of the doctor-patient relationship, and Dr. Sliwin had been her doctor *even before* the start of their

sexual relations [emphasis added]. There was not in the case of Dr. Sliwin and Ms A a pre-existing intimate relationship before the commencement of the doctor-patient relationship. In any event, the Committee recognizes that the Court of Appeal found it irrelevant in law which came first: the prohibition is against the concurrency of a doctor-patient relationship and sexual relations between the doctor and the patient.

The Committee was requested to consider arguments made on the legal effect of judicial precedent and when it was appropriate, if ever, for the Discipline Committee to disregard a judicial precedent.

It was argued on behalf of Dr. Sliwin that the legislative enactment of a spousal exemption "in response to a public backlash against the Court's decision in *Leering*" justifies a reconsideration of precedent in this case.

The Committee does not find on the record that there was a public backlash against the Court's decision in *Leering* or that there was the legislative enactment of a spousal exemption to the mandatory revocation provisions in the Code. What the Committee understands took place is the enactment of *Bill 70, Regulated Health Professions Amendment Act (Spousal Exception) 2013*. Under that legislation, individual regulatory health colleges, by council vote, were given the authority to determine if a limited spousal exception to the mandatory sexual abuse provisions is appropriate for the members of the health profession governed by that college. There was no legislated general spousal exemption from the mandatory revocation provisions under the Code.

There was an "opt-in" provision, with a limited spousal exception. The College of Physicians and Surgeons of Ontario did not opt in and accordingly, the limited spousal exception does not apply to physicians in Ontario. Even if the College had opted-in, the exception would have applied only to spouses, married or unmarried, who meet the definition in the Code. The Discipline Committee stated in its decision on finding that the relationship of Dr. Sliwin with his patient is neither one of marriage, nor a spousal relationship.

Zero-tolerance of sexual abuse remains the objective of the College of Physicians and Surgeons of Ontario. The Health Professions Regulatory Advisory Council, the Minister of Health and the Legislature all heard from the College of Physicians and Surgeons that maintenance of zero-tolerance for physicians with no exception for "spouses" was an important component of the College's expectations for its own members. The mandatory revocation provisions without a "spousal exception" remain in effect for physicians in Ontario.

Counsel for Dr. Sliwin submitted that the Discipline Committee ought to have regard for and apply the recent case of the Supreme Court of Canada (*Canada v. Bedford*, 2013 SCC 72), where the Court held that a trial judge can depart from precedent set by a higher court, where there are compelling reasons to do so. Even if this principle applies to give the Discipline Committee the authority to depart from the established Court of Appeal precedent in the cases above, the Committee does not find there are compelling reasons to do so. The Committee was not persuaded that the developments that Dr. Sliwin relied on were sufficient to meet the threshold for reconsidering a binding precedent.

The Discipline Committee accepts that mandatory revocation as recommended by the Sexual Abuse Task Force is an appropriate means to deal with the very real problem of sexual abuse of patients by physicians and to ensure protection of the public from such abuse.

The Charter Argument

In addition to its finding that there is no constitutionally protected right to practise a profession, the Court of Appeal in *Mussani* addressed the further argument made on behalf of the physician in that case that the mandatory revocation provisions were unconstitutional, as a violation of the Charter of Rights. The Court held that even if the Charter was engaged, the mandatory revocation provisions did not violate the Charter.

It was submitted on behalf of Dr. Sliwin in this case that the mandatory revocation provisions violate sections 7 and 15 of the Charter. Section 7 provides that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof, except in accordance with the principles of fundamental justice. Section 15, which was not raised in *Mussani*, provides that every individual is entitled to equality before and under the law and equal protection and benefit of the law, without discrimination.

With respect to section 7 of the Charter, it was argued that the mandatory revocation provisions were overbroad, grossly disproportionate to legitimate regulatory interests, and arbitrary. The Court of Appeal dismissed this argument and the Discipline Committee considers itself bound by that decision.

This argument was revisited in the light of the amending legislation that gave the governing council of a health profession the ability to pass a regulation creating a limited spousal exception. Dr. Sliwin argued that this opt-in provision and the restriction of the exception to spouses were arbitrary, and that the effect of the law bears no relation to the law's purpose. The Committee was not persuaded by Dr. Sliwin's submissions. The purpose of mandatory revocation is to eradicate the problem of sexual abuse of patients by physicians. As concluded in the Task Force Report, "due to the position of power the physician brings to the doctor-patient relationships, there are no circumstances - none - in which sexual activity between a physician and patient is acceptable. Sexual activity between a patient and a doctor always represents sexual abuse regardless of what rationalization or belief system the doctor chooses to use to excuse it".

Dr. Sliwin further argued that his equality rights under section 15 of the Charter had been violated, as the mandatory revocation provisions (by way of spousal exception, if the College of Physicians were to opt-in) makes a distinction on the basis of marital status.

Both parties reviewed the two part test by which a claim that an individual's section 15(1) rights have been violated, must be assessed. Firstly, there must be a distinction on an

analogous ground to marital status. Secondly, the distinction must create a disadvantage by perpetuation of prejudice or stereotyping.

The mandatory revocation provisions provide for a limited spousal exception only if enacted by regulation by Council of the College of Physicians and Surgeons. Since none has been enacted, there is no possible foundation for Dr. Sliwin's argument that he is subject to a distinction under the law.

Even if a regulation is passed permitting a spousal exception, the effect of the legislative amendment would not subject Dr. Sliwin to differential treatment on the basis of marital status. The spousal exception contemplated by the Legislature is open to both married and unmarried spouses. Dr. Sliwin and Ms A are neither married, nor did they cohabitate in a conjugal relationship for three years (the criterion for being a spouse). Rather, they engaged in an on-again, off-again sexual relations throughout a long standing doctor-patient relationship, during which time Dr. Sliwin was Ms A's surgeon of choice for a variety of surgical procedures. The analogous ground of marital status therefore is not engaged. The second part of the test regarding perpetuation of prejudice or stereotyping, is not applicable. The Committee does not find that by giving regulatory Colleges the authority to limit the spousal exception to married and unmarried spouses, and not including persons who are having sexual relations outside of a spousal relationship, the legislation is unconstitutional for offending section 15 of the Charter. The Committee does not agree that section 15 of the Charter is violated by the mandatory revocation provisions of the Code.

In summary, the Discipline Committee was not persuaded that the mandatory revocation provisions are infringements or unjustified infringements of Dr. Sliwin's sections 7 and 15 *Charter* rights, and dismisses the constitutional motion.

The Committee finds that the mandatory revocation provisions of the Code are constitutional and indeed applicable to Dr. Sliwin.

DECISION ON PENALTY

Having found that Dr. Sliwin committed an act of professional misconduct, in that he sexually abused a patient as captured by subparagraph 1(3)(a) of the Code, and having concluded that the mandatory revocation provisions under the Code are constitutional, the Committee must comply with the Code and apply the mandatory revocation provisions to Dr. Sliwin for the finding made against him. Additionally, it is mandatory on the finding made that Dr. Sliwin be ordered to appear before the panel to be reprimanded.

For its finding of professional misconduct for disgraceful, dishonourable or unprofessional conduct, the Committee determines that no additional penalty order be made.

Funding of Patient Therapy and Counseling

The Committee did not hear submissions on funding of patient therapy or counseling. Although Ms A did not see herself as the subject of sexual abuse, the Committee will consider written submissions whether it would be appropriate to make an Order under sections 51(2)5.1 and 5.2 of the Code, to provide such funding in the event that Ms A decides she needs help in the future by way of therapy or counseling as a result of the sexual abuse. Under the program established pursuant to section 85.7 of the Code, funding for therapy or counseling would be paid directly by the College to the therapist or counselor, if assistance is sought by Ms A, and Dr. Sliwin would be required to reimburse the College for the therapy or funding provided. If funding for therapy and counseling is sought, the Committee directs that this be addressed in written submissions to be exchanged and filed within 21 days of this penalty decision.

COSTS

Further, the Committee did not hear submissions on costs. If the parties cannot agree on the issue of costs, the Committee directs that written submission on costs be exchanged and filed within 21 days of this penalty decision.

ORDER

The Discipline Committee therefore orders and directs that:

1. The Registrar revoke Dr. Sliwin's certificate of registration, effective immediately;

2. Dr. Sliwin appear before the panel to be reprimanded and the fact of the reprimand be recorded on the register.

DECISION AND REASONS FOR DECISION ON COSTS AND FUNDING

INTRODUCTION

In its penalty decision of April 1, 2015, the Discipline Committee ("the Committee") revoked Dr. Sliwin's certificate of registration and ordered him to appear before the Committee to be reprimanded. The matter of costs and funding for therapy and counseling had not been addressed in the submissions of the parties and the Committee therefore did not dispose of these matters. The Committee directed that the parties exchange and file written submissions on costs and funding. The written submissions of the parties and the written advice of independent legal counsel were filed with the Committee on September 30, 2015. They have been considered by the Committee, which renders its decision on these matters.

SUBMISSIONS

The College submitted it should be awarded its costs of conducting all 14 days of the hearing, for a total of $48,140.00. The College submitted that it would be unfair to have the general membership shoulder the costs of a successful prosecution. In addition, the College submitted that Dr. Sliwin should be required to reimburse the College for any funding provided for the Complainant under the program for the funding of therapy or counselling under section 85.7 of the Health Professions Procedural Code. The College further submitted that Dr. Sliwin should be required to post an irrevocable letter of credit

or other security acceptable to the College in the amount of $16,060.00, in order to guarantee the payment of any amounts he may be required to reimburse for funding.

Counsel for Dr. Sliwin agreed that the College is entitled to a costs award, but submitted that, in the circumstances of this case, the award should be somewhat less than the full tariff amount sought by the College. Counsel further submitted that an order with respect to funding for therapy or counselling pursuant to s. 51(2)5.1 was inappropriate in the circumstances of this case.

DECISION

The Committee awards costs to the College in the amount of $48,140.00. In addition, the Committee orders that Dr. Sliwin reimburse the College for funding provided for the complainant under the College's program to fund therapy or counselling for patients sexually abused, and that Dr. Sliwin post an irrevocable letter of credit or other security in the amount of $16,060.00 to guarantee the payment of any amount Dr. Sliwin may be required to reimburse under the funding order, pursuant to sections 51(2), 5.1 and 5.2 of the Health Professions Procedural Code ("The Code").

REASONS FOR DECISION

Costs

The parties do not dispute that the Committee has the authority to order the member to pay costs to the College. This is set out in the Code under section 53.1:

> In an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct or finds to be incompetent to pay all or part of the following costs and expenses:
>
> 1) the College's legal costs and expenses;
>
> 2) the College's costs and expenses incurred in investigating the matter; and

3) the College's costs and expenses incurred in conducting the hearing.

In determining an appropriate costs award, the Committee must consider the nature of the misconduct and the relative success of the parties in the proceeding.

The Committee found that Dr. Sliwin committed a most serious act of professional misconduct in that he sexually abused a patient. The Committee determined that this was an appropriate case to make a costs award in favour of the College. This is consistent with other decisions in which the Committee has made a finding of sexual abuse.

The Committee carefully considered the submissions of the parties on the quantum of the costs award and is of the view that the tariff amount per diem for the fourteen (14) days of the hearing is fair and reasonable and is therefore appropriate to award to the College. In reaching this decision, the Committee took into account both the serious nature of the misconduct and the relative success of the parties.

The Committee accepts the College's submission that it would be unfair for the general membership to bear the costs of a successful prosecution. The Committee is aware that the amount sought and awarded is only a small portion of the actual costs of the discipline proceeding. Firstly, the College did not seek payment of the costs of its investigation, which is in the Committee's jurisdiction to award. Secondly, the tariff amount for the costs of the hearing represents only about 50 percent of the actual hearing costs the College incurs.

Dr. Sliwin argued that the motion to stay and the constitutional motion were novel, and costs should be shared. The Committee dismissed these motions for the reasons given, and it followed clear case law precedent in doing so. It is appropriate that Dr. Sliwin bear the cost of these unsuccessful motions.

Funding for Therapy or Counselling

Under section 51(2)5.1 of the Code, the Committee has the discretion to make an order for future reimbursement for therapy or counselling of patients who have been sexually abused by their physician. The Committee is of the strong opinion that regardless of the evidence from the Complainant that she did not consider herself to have been sexually abused, the Committee found that Dr. Sliwin sexually abused her as a patient. The Complainant may seek counselling in the future, and, if so, she will be eligible for reimbursement from the funding program provided by the College, due to the finding of sexual abuse by this Committee. It is in the best interest of the public that funds be available for therapy or counselling for patients sexually abused by their physician. These costs should be borne not by the membership at large, but rather by the physician who committed an act of sexual abuse.

ORDER

Therefore, the Discipline Committee orders and directs that:

1. Dr. Sliwin pay costs to the College in the amount of $48,140.00 within 30 days of the date of this Order.

2. Dr. Sliwin is required to reimburse the College for funding that may be provided to the complainant under the College's program that provides funding for therapy or counselling for persons who, while patients, were sexually abused by members; and to post an irrevocable letter of credit or other security acceptable to the College, within 30 days of the date of this Order, in the amount of $16,060.00, to guarantee the payment of any amounts he may be required to reimburse for funding provided to the complainant under the program required under section 85.7 of the Code.