

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Romeo Banzon Tan, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name of or any information that could identify Patient A, including the identity of Patient A's family members, under subsection 45(3) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

The Committee also made an order to prohibit the publication, including broadcasting, of the name of Patient A or any information that could identify Patient A under subsection 47(1) 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; 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.

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

Citation: *College of Physicians and Surgeons of Ontario v. Tan*, 2021 ONCPSD 25

Date: June 2, 2021

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Romeo Banzon Tan

FINDING REASONS

Heard: February 3 to 6, 2020, in person

Panel:

Dr. Eric Stanton (chair)
Mr. Mehdi Kanji
Dr. William King
Dr. Peeter Poldre

Appearances:

Ms. Elisabeth Widner and Ms. Simmy Dhamrait, for the College
Mr. Adam Patenaude, Mr. David Humphrey and Ms. Alexandra Jockwig-Welsh, Student-At-Law,
for Dr. Tan
Mr. Gideon Forrest, Independent Legal Counsel to the Discipline Committee

Introduction

- [1] The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter on February 3 to 6, 2020. At the conclusion of the hearing, the Committee reserved its finding.
- [2] For the reasons set out below, the Committee finds that Dr. Tan committed an act of professional misconduct in that he engaged in sexual abuse of a patient and 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.

Facts & finding on allegation

Background

- [3] The Patient, a qualified obstetrician/gynecologist in her country of origin (the Philippines), alleged that in the course of a complete physical examination for which she was provided neither privacy, gown nor drape, Dr. Tan performed a purported pelvic examination which was sexualized and inappropriate. Moreover, in its aftermath, he asked questions and made remarks of an inappropriate and sexual nature.

Allegation

- [4] The Notice of Hearing alleged that Dr. Tan committed an act of professional misconduct:
1. under clause 51(1)(b.1) of the Code in that he engaged in sexual abuse of a patient; and
 2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991, SO 1991, c. 30 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.

Member's response

- [5] Dr. Tan denied the allegation in the Notice of Hearing.
- [6] Dr. Tan denied not only sexual impropriety but also that any pelvic examination took place as part of the physical examination. He also denied asking the question or making the remarks that the Patient alleged he made following the physical examination.

Issues

- [7] The issues in this case are:
1. Did Dr. Tan commit sexual abuse of the Patient by touching of a sexual nature and/or by making remarks of a sexual nature towards her in an appointment in May 2014;
 2. Did Dr. Tan engage in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional with respect to his touching of the Patient and/or his remarks in an appointment in May 2014; and
 3. Did Dr. Tan engage 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 by failing to provide privacy, gown or drape before conducting a complete physical examination of the Patient?

Summary of the evidence

- [8] The Committee heard the evidence of the Patient, Dr. Tan, Ms. Manuelea Batiller (Dr. Tan's former employee) and Ms. Zorayda Tan (Dr. Tan's wife).

Background and testimony of the Patient

- [9] The Patient grew up in the Philippines. She was in her 40s at the time of the hearing.

- [10] While her first language is not English, she received most of her education in English and speaks it fluently. She graduated from medical school in 2000 and, following a year of internship, did a residency in obstetrics and gynecology between 2002 and 2006. During this training she also obtained a degree in nursing.
- [11] After obtaining her specialist qualifications she worked in a private clinic in the Philippines as an obstetrician-gynecologist from 2006 to 2012 with two other doctors, one an internist and the other a pediatrician.
- [12] The Patient testified that she had done “thousands” of pelvic examinations, describing them as the “bread-and-butter” of her specialty.
- [13] The Patient described in detail the conduct of such examinations as she performed them. She stated that the first step would be to provide the patient privacy while undressing and a suitable gown and/or drape. She would explain the positioning of the patient on the table and of her feet in the supporting stirrups. She would then explain each step to be followed in the procedure, reassuring the patient that, while there might be some minor discomfort, she would do everything possible to minimize it. She would then proceed by inspecting the external genitalia, doing a speculum examination including taking any necessary samples such as a Pap smear and lastly, performing a bimanual examination to assess any masses, tenderness or the gestational size of the uterus in a pregnant patient.
- [14] The Committee understands that the Patient was not tendered as an expert and we are not relying on her evidence as evidence of the standard of practice. Rather, we took this evidence as evidence of the Patient’s understanding of what a pelvic examination, in her former practice, would normally entail.
- [15] In 2012, the Patient emigrated to Canada along with her husband and young daughter to make a better life for her family, which now also includes a young son.
- [16] The Patient has never returned to the practice of medicine but worked for two years as a private caregiver for a retired anaesthesiologist while she studied to qualify as a registered practical nurse (RPN), obtaining her degree in 2015. She works as an RPN.

- [17] After waiting the three-month period required to qualify for OHIP coverage, the Patient sought a family doctor to look after herself and her family. On the recommendation of a fellow community member, she contacted Dr. Tan, with whom she shares a country of origin, who had an office convenient to their home and a large practice in their shared ethnic community. He spoke her first language as well as English and the family would be able to speak both languages with him.
- [18] The Patient enrolled the whole family in Dr. Tan's practice, with a first appointment in March 2013.
- [19] The Patient described the setup of the office. The door opened to a small waiting area with a limited number of seats along one wall opposite a secretary/receptionist and, on some occasions, a second woman whom she subsequently learned from overhearing "waiting room gossip" was Dr. Tan's wife. There were two consulting/examining rooms. Dr. Tan had, at that time, a physician assistant who had been a doctor in the Philippines, whose name she could not recall.
- [20] The Patient remembered that at that initial visit, all three family members went into the clinic room together. After initial history taking, Dr. Tan examined her daughter and her husband, and they then returned to the waiting room prior to her examination.
- [21] Dr. Tan then performed a complete physical examination on her which included an examination of her breasts but no internal examination. She did not recall any third party being present or being offered either a gown or a drape.
- [22] When the time came to examine her breasts, she does not recall whether she was asked to undress but she believes that she just lifted up her shirt and her bra to permit the examination. Despite the unorthodox approach, she testified that she had no problem with Dr. Tan's examination of her breasts.
- [23] Following the examination, Dr. Tan asked when she had last had a Pap smear. When she replied that she had never had one, he stated that he would refer her to a female gynecologist for the procedure. The referral was made to a Dr. Ray, but there appears to have been a communication failure and the Patient did not attend Dr. Ray.

[24] When the Patient returned for follow-up, she was angered to be told that Dr. Ray's office would require a \$100 missed-appointment fee for an appointment which she claimed she had heard nothing about. Dr. Tan resolved the matter by referring her to a different gynecologist, Dr. Cha, whom she did see subsequently.

[25] The specifics of Dr. Cha's consultation are important, in light of the Patient's testimony that Dr. Cha "didn't do any manual exam or pelvic exam."

[26] Three documents relevant to the Patient's gynaecologic history are:

1. Page 6 of Dr. Tan's patient chart for the Patient shows that Dr. Cha's office assigned her an appointment date in July 2013.
2. Page 5 of Dr. Tan's chart is a handwritten report of a gynaecologic consultation. Although Dr. Cha's name does not appear, the report is dated in July and was identified in Dr. Tan's testimony as being the report from Dr. Cha of the Patient's consultation. The report is relatively brief and contains several abbreviations which make it difficult to be certain what the examination actually entailed. However, the report does establish that a Pap smear was done and concludes "normal gynecologic exam." While Dr. Tan testified that "P. V." indicated that a pelvic exam was done, the Committee was unable to determine the components of that examination.
3. A transcription of Dr. Tan's office note from the Patient's visit of October 2013 includes the entry, "Normal Gyne Exam."

[27] In light of the ambiguity of the notes, we were unable to determine whether the Patient's memory of Dr. Cha's examination was faulty. We concluded further that, in the assessment of the Patient's reliability, this matter would have been of marginal importance in any event.

[28] The Patient visited Dr. Tan on several occasions over the subsequent 13 months for follow-up and for minor medical problems. For example, she recalled that in February 2014, she went to him with hives and some difficulty breathing and received an injection and an antihistamine. She also took her daughter to his office on multiple occasions for colds, the flu and, on one occasion, pneumonia.

- [29] The Patient's account of her last appointment, which took place in May 2014, is central to this case.
- [30] The Patient testified that she had received a phone call instructing her that she was due to come in for an annual general physical examination. It was a morning appointment. She came by bus, bringing her young daughter with her. Her husband was asleep, having worked a night shift. She testified that the child did not have an appointment that day.
- [31] She recalled checking in with the receptionist and that Dr. Tan's wife was also present. She testified that there was frequently a long wait to see the doctor but didn't recall whether she had to wait on that occasion. She was instructed to go into Room 1 (along with her daughter), the room closest to the reception area. She testified that she was seen in this room on each of her visits to Dr. Tan.
- [32] She described the main features of the room consisting of a desk behind which Dr. Tan would sit, with patient chairs opposite and an examining table along one wall. On the other wall there was a cabinet with medical supplies.
- [33] She recalled that the door was left open while Dr. Tan took her history (she had no health complaints or concerns at that time) but then was closed prior to his commencing the physical examination. She recalled that she was wearing pants and a shirt.
- [34] While her daughter remained seated at the desk a few feet away, the Patient sat on the examining table while her vital signs were taken and then lay supine for the remainder of the physical examination. She testified that no third party (apart from her daughter) was present at any stage. There was no explanation of the procedure to be followed but she anticipated that it would be similar to the examination that she had had a year previously. She testified that Dr. Tan did not seek consent for any stage of the examination. She testified that she was offered neither gown nor drape. She lifted her shirt up to her ribs to allow Dr. Tan to conduct an abdominal examination; she expressed no concerns with his examination of her abdomen.
- [35] When the time came for examination of her breasts, she recalls Dr. Tan saying, "Now it's time for your breast exam." She lifted her shirt further as well as her bra

to fully expose her breasts and he proceeded to inspect, palpate and examine her breasts and axillae in what she interpreted as a proper fashion. She had no issue with his conduct of the breast examination.

- [36] The Patient testified that Dr. Tan then said, "Now we will do a speculum and internal examination." She was surprised because she was not experiencing any pelvic complaints and because he had referred her to a specialist for the internal examination the previous year. Also, the examination less than a year before had been normal. She testified that he offered no explanation. Although she could see no indication for this examination she testified, repeatedly, that she trusted Dr. Tan both as a doctor and as a fellow countryman.
- [37] She does not recall being asked to undress but she removed her pants and underwear so that she was naked from the waist down. She testified that Dr. Tan remained present throughout.
- [38] Regarding how she positioned herself on the examining table, the Patient stated, "So, I lie supine, with my both legs bent and spread. He doesn't have -- the examining table of Dr. Tan doesn't have any stirrups. So, I have to put my foot on each corner of the bed, of the examining table, at the edge...My legs were bent and spread with my feet at each corner of the examining table."
- [39] As she was supine looking at the ceiling, she could not actually observe what Dr. Tan was doing, but she testified that he first performed a speculum examination using a disposable plastic speculum. At no point was there any explanation of what he was doing.
- [40] She testified that he then inserted his fingers into her vagina (but without placing his other hand on her abdomen as she would have expected) and commenced a "thrusting" motion which she described as "in and out" and sometimes "side to side." She stated that he sometimes thrust quite deeply to the point that it was painful.
- [41] She testified that while she considered the examination unorthodox, she continued to give him the "benefit of the doubt," concluding that perhaps he was having difficulty trying to reach her cervix.

- [42] The Patient was unsure how long this process went on, testifying subsequently that it seemed like an “eternity.” She made no protest to Dr. Tan but he eventually stopped when her young daughter came over to her and said, “Mommy, I want to go home.” Dr. Tan removed his fingers and conducted the little girl back to her seat at the desk and gave her something to play with. He then returned and resumed the thrusting.
- [43] The Patient testified that she continued to trust that Dr. Tan was doing a pelvic examination and was perhaps having trouble palpating her cervix. She further testified that, despite the discomfort, she said to herself that, “maybe it’s just how he does the internal examination,” although it was very different from how the Patient used to do them.
- [44] However, she testified that her trust was shattered when he removed his gloved hand, rubbed his thumb and fingers in a circular motion to demonstrate secretion and said, “I think you are aroused. Look.” She testified that it was at that point that she realized that she had been “molested.” Still, she said nothing and described herself as being in a state of shock.
- [45] She then rose and was putting on her underwear and pants when he asked if she had ever experienced orgasm. She made no reply but finished dressing and returned to sit beside her child.
- [46] According to her evidence, Dr. Tan then stated that if she did not experience orgasms she could join “arousal sessions” which he conducted for his other female patients and he offered to make an appointment for her. He then said (in Tagalog) that if she achieved orgasm, he could put his hand over her mouth so that if she moaned it would not be heard by the other patients in the waiting room.
- [47] She stated that she knew such talk was unprofessional and inappropriate, but she remained silent, just wanting to let him finish talking and get out of the room. She left the clinic and she “didn’t look at anybody,” “didn’t talk to anybody.”
- [48] Neither she nor her family ever returned to see Dr. Tan.

- [49] She went straight home and remembers talking with her husband, but she doesn't think she told him about the incident until a few days later. She attributed this to still being in a state of shock.
- [50] She stated that when she *did* tell her husband, he was furious and wanted to go to the police. She dissuaded him on the basis that they were newcomers and might not be believed and she didn't want to get into "a mess bigger than they could handle."
- [51] For three-and-a-half years she carried on with her life until October 19, 2017, when she read a report in the *Toronto Star* concerning a doctor who lost his licence to practise medicine for sexual abuse of a patient. She testified that this brought back suppressed memories of her abuse at the hands of Dr. Tan and she reconsidered reporting him. From the article, she learned about the College of Physicians and Surgeons and (from its website) about the process of lodging a complaint against a doctor.
- [52] She testified that prior to contacting the College, she "jotted down" her memories of that day.
- [53] When she did call the College on October 23, 2017, she asked Ms. Greenberg of the College whether anyone had already complained about sexual abuse by Dr. Tan.
- [54] She also testified that, approximately a year later, after learning that the College's Inquiries, Complaints and Reports Committee (ICRC) had found her report sufficiently plausible to refer her complaint against Dr. Tan to the Discipline Committee, she decided to make a report to the police. This eventually resulted in Dr. Tan being charged with sexual assault.
- [55] On cross-examination, the Patient was challenged on virtually every aspect of this section of her testimony.
- [56] She agreed that she had familiarized herself with the College's policies respecting sexual abuse of patients prior to contacting the College.

- [57] She also agreed that, beyond just “jotting down” a few memories, she had prepared a detailed, typewritten document before phoning Ms. Greenberg. She also agreed that she had later edited the document, correcting some factual errors, after receiving Dr. Tan’s reply to her complaint. Among the mistakes which she corrected was the memory (at the time of her initial report) that the final visit had occurred four to five years prior to her report (as opposed to three and a half) and the age of her daughter at the time which she admitted she had calculated based on the date she believed the incident took place. She testified that she was “not good with dates” but maintained that the other details in the document were accurate to the best of her ability. She admitted that she also used the initial version of the document as a guide when she was interviewed by the College investigators. The College interview was before she had received Dr. Tan’s response and made edits to her notes, so she was using the initial version, not the later edited version.
- [58] She reiterated that it was after she learned that the matter had been referred to the Discipline Committee that she concluded that she “had a good case,” one which she could take to the police. She agreed that she took the edited version of the document with her when she went to the police interview and “read it into the record.”
- [59] She agreed that she had reviewed the document and the interview transcripts prior to testifying at this hearing.
- [60] The Patient, who testified at the hearing in English, was questioned about the fact that she had originally asked for an interpreter for the hearing. After counsel for Dr. Tan reviewed her extensive education, which had been provided almost exclusively in English, she agreed with the suggestion that she was proficient in English. She explained that she had originally asked for an interpreter for the hearing because, under pressure, she might “go blank and lose the words.”
- [61] The Patient testified that she had reviewed Dr. Tan’s letter of response to her complaint but had not seen his office records respecting her. She admitted that she had been able to correct the dates and the number of office visits by reference to his response.

- [62] She also agreed that she had no concerns with Dr. Tan's conduct for the six visits preceding the final visit.
- [63] She testified that Dr. Tan was aware that she had been a doctor in the Philippines because she had told him that fact on her first visit.
- [64] In reviewing her initial physical examination, she repeated that Dr. Tan had never sought consent to examine her breasts, had never left the room to afford her privacy while undressing, had offered neither gown nor drape and that neither Ms. Batiller (the receptionist) nor any other third party had been present during the examination.
- [65] She confirmed an entry in her chart by agreeing that she has inverted nipples.
- [66] The Patient was asked whether her appointment in May 2014 was actually booked by her husband in April 2014 when he had been in for an appointment and had made appointments for a general physical examination for himself and for her. The Patient replied that she did not believe her husband would have booked an appointment for her and still believes Dr. Tan's office called her to book a physical. As to whether someone (either herself or her husband) had called that morning to cancel his appointment and booked her daughter in instead, the Patient indicated that she did not remember calling or cancelling anything and maintained her recollection that her daughter did not have an appointment and was not examined. She indicated that if the records document that her daughter had an appointment and was examined, then her memory failed her on that point.
- [67] Dr. Tan's records show that her daughter had an appointment and was examined that day.
- [68] Regarding whether the Patient's appointment was actually at 3:30 in the afternoon and her daughter had an appointment for 3:45, the Patient testified to having difficulty with memories of the timing but had concluded that the appointment was in the morning because it was daylight. She was adamant that, "because of what he did to me," she would never have allowed Dr. Tan to examine her daughter after that had occurred.

- [69] The Patient testified that she had no memory of taking note of the secretary's movements.
- [70] The Patient's estimate of the distance from the reception desk to the examining room door was about 10 feet.
- [71] She repeated her earlier testimony that she had learned from overhearing other patients in the waiting room that the second woman at the reception desk was Dr. Tan's wife. She denied hearing that she was his second wife or that Dr. Tan's first wife was a doctor.
- [72] The Patient insisted that she had no memory of an examination of her daughter taking place and said, "Regarding Dr. Tan's documentation, don't believe them totally." The Patient explained that because Dr. Tan's records do not document that he performed an internal examination during her May 2014 appointment, she believes his records are questionable. She maintained that she did not believe that her daughter was examined because she had no memory of it.
- [73] Regarding the referral to Dr. Ray a year previously and the subsequent referral to Dr. Cha, the Patient indicated that Dr. Cha had not conducted a bimanual examination. The Patient's evidence-in-chief was that Dr. Cha "didn't do any manual examination or pelvic exam" and she answered "no" to whether Dr. Cha did a bimanual examination. In cross-examination, when asked if there was no bimanual examination, she said, "I only remember the speculum exam, sir." And then when asked if there was no bimanual, she said, "That's what I remember." She agreed that Dr. Cha had found no gynecologic abnormality. This led to the suggestion that based on her background she would have known that there was no indication for a pelvic examination at her May 2014 appointment. She agreed but repeated that she submitted to the examination because, "I trusted him that much."
- [74] When it was suggested to her that no pelvic examination had taken place, she appeared to become angry and insisted that if it was not in the documentation, that only indicated that the documentation was false.
- [75] Concerning the issue of whether she was offered a gown or drape and the various steps of the internal examination, or whether, if things had occurred as she

describes, she should have known that what was taking place was inappropriate, the Patient's repeated responses were that she was being overly trusting and was giving Dr. Tan the benefit of the doubt.

- [76] The Patient testified she was aware that her daughter was seated a few feet away while this was going on but that she wasn't aware of where her daughter's attention was directed until she approached and said, "Mommy, I want to go home." She denied that she had fabricated this incident to show that the examination was taking a long time, in order to bolster her overall account of the inappropriate examination. When asked why she had remained still and silent while Dr. Tan guided her daughter back to her chair and then returned and resumed this "perfectly improper examination," the Patient replied, "Believe it or not, until to the very last moment, I trusted Dr. Tan that much."
- [77] When she repeated that the moment she realized that she had been abused was the moment when Dr. Tan held up his gloved hand, made the gesture of rubbing his thumb over his fingers and said, "I think you are aroused. Look," counsel for Dr. Tan suggested that the reason that she repeated the gesture so exactly with each telling was that she had written herself a script and then memorized the script. The Patient insisted that she remembered what had happened before she wrote it down and it was the vividness of the memory which gave rise to the similarity of the repetition.
- [78] Despite suggestions that the Patient's previous testimony concerning Dr. Tan offering "arousal sessions" to help her achieve orgasm was preposterous and that the offer would have taken place within a few feet of where Dr. Tan's wife was sitting in the reception area, the Patient stoutly maintained that it took place almost exactly as previously described.
- [79] Counsel suggested to the Patient that she had adapted the notion of "arousal sessions" from a film called *Hysteria*. While acknowledging that she had seen the film prior to coming to Canada, she repeatedly maintained that the memory of the film first came to her when she was jotting down her best recollection of the May 2014 appointment prior to calling Ms. Greenberg of the College. She agreed that, in her typed statement of October 23, she had included the question, "Is there such

practice in Canada like in the movie Hysteria?” She explained that she was inquiring whether “arousal sessions” were a legitimate treatment for which a doctor could bill OHIP.

[80] She testified that, in the aftermath of the examination, during the conclusion of the appointment with Dr. Tan and as she was leaving the appointment, she made every effort to appear unconcerned and did not cry or appear overtly upset. Her motivation was to get out of the office as quickly as possible without making a scene.

[81] She testified that when she got home, her husband was sleeping. She stated that she was still in a state of shock and was not crying or showing emotion; she didn’t tell her husband anything about the appointment on that day.

[82] She agreed that when she was interviewed by the police in December 2018, she told them that she had told her husband about the appointment on the same day but explained in her testimony that that part of her statement to the police had been a mistake. She reiterated that she was not good with dates or “anything regarding timeframe.”

[83] A passage from the Patient’s police report concerning why she had not come forward earlier was virtually identical to a passage from her October 23, 2017 report. She explained that it was a simple matter of “cut and paste,” not, as implied, a “script.”

[84] A brief re-examination established that, in her work as an RPN, the Patient would have no direct familiarity with OHIP billing or which procedures were funded.

Background and testimony of Ms. Batiller

[85] Ms. Batiller, Dr. Tan’s former secretary/receptionist, testified that she was born in 1965 and came to Canada in October 2000. She obtained a Bachelor of Science in medical technology and retrained as a medical laboratory professional in Ontario, becoming certified in 2014.

[86] Beginning in 2011, she worked part time (Tuesdays and Thursdays) as a lab technician at a fertility clinic

- [87] She began working for Dr. Tan in 2010 and when he moved to his Bathurst Street clinic in 2011, she became his medical secretary/receptionist, working Mondays, Wednesdays and Fridays. Her duties included answering the phone, booking appointments, keeping track of supplies and assisting Dr. Tan if he had a general assessment “inside the room.”
- [88] She identified the billing sheet of the Patient’s husband. It showed that he had an appointment in April 2014 for cough and flu. An appointment for him for the May 2014 date in question was marked as cancelled.
- [89] A second sheet generated from the EMR showed that an appointment had been made for the Patient’s husband (created by Ms. Batiller) for the relevant date in May at 3:45 p.m.; its status was “cancelled.”
- [90] Ms Batiller identified another document headed “edit an appointment” as pertaining to the Patient. The date on the sheet was the May 2014 date and the status of the afternoon appointment was identified as “billed.”
- [91] She identified a third (heavily redacted) document as a printout of the day sheet for the relevant day in May 2014. It showed that there had been a patient booked at 15:30 who attended and another who was booked at 15:45 had cancelled; another patient had been substituted in that slot.
- [92] Ms. Batiller testified that when one clicks on a scheduled appointment on the day sheet portion of the EMR, the appointment would turn green for a regular appointment and violet for a general assessment. After the appointment is billed, it would turn blue. She was therefore able to know in advance when a patient was booked for a general examination. If the patient was booked for a “physical” she would pull the chart, inform them they had a physical booked and then lead them into the office with the chart. Dr. Tan would then go into the room and take the history. If a woman was to undergo a breast exam, Dr. Tan would give the patient a gown and then leave the room. She would then be responsible for checking if the patient was ready before both of them would return to the room. She would remain in the examining room during the physical examination but said that it was not her practice to make a note in the chart to indicate that she had done so.

- [93] She testified that she has not worked for Dr. Tan since June 2016 and that he left the office at 4119 Bathurst St. in 2016.
- [94] Ms. Batiller reviewed photographs of the Bathurst Street office, which is now a physiotherapy clinic, taken January 22, 2020. She testified that, while there had been some alteration in the configuration of the office, the room identified in previous testimony as examining room one and the reception area remained in the same general set-up.
- [95] Lastly, Ms. Batiller testified that she has no independent memory of the Patient's appointment in May 2014.
- [96] In cross-examination, Ms. Batiller testified that she had, herself, been a patient of Dr. Tan since 2011 but, apart from a physical examination in 2017, she had not seen him until two weeks prior to the hearing when she attended for a medical appointment.
- [97] She initially testified that they did not discuss the Patient's complaint or the hearing in this matter between 2016 and when she testified at the hearing. Regarding her appointment with Dr. Tan two weeks prior to the hearing, Ms. Batiller initially testified that they did not have any discussions about her coming to testify at the hearing but contradicted herself a few moments later by stating that they did. They were alone during this discussion, although Ms. Tan was outside in the reception area. Ms. Batiller testified that Dr. Tan told her that "he needed her to testify at the hearing."
- [98] Ms. Batiller testified that she first learned about this matter when she saw a report in 2019 on television that Dr. Tan had been arrested for sexual assault and also learned from that report of the College investigation. She testified that she did not call the office or ask about it at the time, but when she saw Dr. Tan next, in 2020, she asked him about the charges.
- [99] Ms. Batiller stated that she had not reviewed the appointment documents which had been made exhibits, or any other documentation, prior to the hearing.
- [100] Ms. Batiller testified that she had no recollection of the Patient and had no social relationship with her. She testified that prior to the hearing she knew who the

Patient was, but she had not reviewed any of the documents concerning the Patient's appointment, nor had she been informed of the name of the Patient's husband.

[101] She testified that her previous evidence that it was the Patient's husband who had booked the Patient's May 2014 appointment was an assumption she had made because the Patient's appointment was made on the same April 2014 date that the Patient's husband had been in for an appointment. She stated she made an assumption that he was the Patient's husband, based on their same last name. Ms. Batiller denied having been told, prior to the hearing, that this person was the Patient's husband.

[102] She testified that, on January 22, 2020, after she had had an echocardiogram, Dr. Tan met her in a private office and asked her to go to the Bathurst Street clinic and take photographs of the whole area. When she arrived there, another individual (Dr. Tan's stepson) had already taken the photographs.

[103] Ms. Batiller testified that the appearance of the reception area and, in particular, the examination room as seen in the photographs, corresponded with her recollection of their appearance in 2014, in the main.

[104] Regarding two emails from College investigator Mr.J.P., dated in July and August 2018, Ms. Batiller acknowledged that she had been mistaken when she testified that she received them in 2019.

[105] Ms. Batiller agreed that, when she worked there, Dr. Tan had a busy clinic, seeing 40 to 50 people a day on Mondays, Wednesdays and Fridays. She confirmed that her duties as the sole employee included: answering the phone, booking in patients and making sure their charts were ready, faxing papers and making appointments and calling patients with results. She agreed that when Ms. Tan was there, Ms. Tan's role was as the office manager, which would involve separate duties.

[106] Following a series of questions reviewing the colour changes in the EMR when a patient is checked in, she indicated that when a patient is there for a general assessment, a blue form is placed in the chart and a sticky is added to the front to

indicate that it is a general assessment. She testified that the blue form is used only for the initial general assessment and not for a repeat annual physical.

[107] In a document dated April 29, 2013, there was a handwritten entry, “no answer,” which she agreed she had written. She explained that this meant she had phoned a patient but that there was no answer. She also confirmed that the Patient’s appointment with Dr. Ray had been made for May 3, 2013.

[108] She repeated her testimony that when Dr. Tan was doing a breast examination, she chaperoned him inside the examining room. She agreed with the suggestion that she would only do so if the patient requested it, but then stated that she would always chaperone Dr. Tan if he was doing a breast examination. Ms. Batiller was presented with a will-say statement and agreed that she had reviewed it prior to testifying. She then indicated that she had not seen it prior to testifying, before agreeing that she had reviewed it before. When confronted with that portion of the will-say statement, she agreed that she only went into the examining room to chaperone when Dr. Tan came to get her and that if Dr. Tan did not come and get her she would not be in the room.

Background and testimony of Ms. Tan

[109] Ms. Tan was born in the Philippines in 1974 and came to Canada in 1990. She studied accounting and after graduation she worked for the Toronto Dominion Bank and subsequently for the Bank of Montréal.

[110] She married and had a son but was separated from her first husband by the time she met Dr. Tan in 2008. At that time, she was living in Toronto and he was practising in Cape Breton so they carried on a “long distance relationship.” They both found this relationship difficult to sustain so, after obtaining his license to practice in Ontario, Dr. Tan moved to Toronto in November 2009.

[111] Ms. Tan testified that Dr. Tan started the Toronto practice from scratch and originally had two clinics, one at 4119 Bathurst and a second at 4810 Sheppard Ave. E. She worked with him at both clinics, six days a week, 10 to 12 hours a day. Her duties as office manager included billing and payroll but she also did secretarial duties, answering the phone, scheduling appointments and ordering

office supplies. She stated that she always preferred to sit at the reception area, rather than having her own office, as she liked to monitor the patient flow and help out the staff.

[112] In 2016, they consolidated the two offices into a single clinic at 935 Sheppard Ave. W.

[113] Looking at the Bathurst clinic photographs, Ms. Tan identified similarities and differences from the set up when they worked there. She stated that her place at the reception desk was only “a few feet” from the door to the first examining room. She also stated that the walls were thin and that she could usually hear the sound of voices from the examining room, although not clearly enough to make out what was being said.

[114] She testified that she had no recollection at all of the Patient.

[115] Ms. Tan stated she was present in November 2017 when College investigators first arrived to notify Dr. Tan of the complaint against him. (She subsequently amended that testimony to indicate that she had stepped out of the office but returned immediately when she was informed by another staff member that College investigators were there.) She stated that this was the first time that they learned of the complaint.

[116] It was a very busy clinic and they were “two hours behind,” so she said that her main role, after locating the Patient’s chart, had been calming patients. Dr. Tan, she testified, was anxious to get on with the clinic and to defer discussion with the investigators to another time.

[117] She also agreed that her primary position when at the clinic was at the reception desk at the front. When asked if, when Dr. Tan was in the examination room with the door closed, she would ever “just bombard in,” she replied, “absolutely not.”

Background and testimony of Dr. Tan

[118] Dr. Tan testified that he was born in 1959 in rural, southern Philippines. He graduated from medical school in Manila in 1987. After completing internship, he

practised at Samar Provincial Hospital near to the village where he was born. In 1991, he married a medical school classmate.

[119] He emigrated to Canada in 1992 and, after passing the Medical Council examinations, he established a practice in Baie Verte, Newfoundland where he remained until 1999. The practice included family medicine, emergency shifts and being the doctor for the local miners.

[120] In 1999, he moved to Cape Breton, to a rural family practice; he had a hospital affiliation and also practised addiction medicine. He practised there for almost 10 years.

[121] Over the years in Nova Scotia, Dr. Tan achieved full licensure by passing both parts of the LMCC exams.

[122] In early 2008, he and his wife separated. In the latter part of 2008, he met Ms. Tan and they made the commitment that he would move his practice to Ontario and she would resign her executive position to help him establish his practice there.

[123] He described the difficulties of practising in multiple locations and the consolidation of his practice to two locations in 2013. He described the Bathurst Street location as serving a substantial Filipino community and being reasonably proximate to his home. He said that he gained new patients mainly by word-of-mouth and through the efforts of his parents-in-law.

[124] He stated that, at first, Ms. Tan functioned as his secretary as well as office manager but, as his income increased, he was able to hire other staff. He stated that Ms. Batiller's duties as secretary were to book appointments, answer the phones, fax referrals, do some filing, chaperone intimate examinations and tidy up the room after he finished physical examinations, as well as ordering some of the supplies.

[125] He described in some detail his routine for an initial history and physical examination on a female patient. In particular, he described in detail the procedure for breast examination which included obtaining consent and then getting a gown from underneath the examining table and instructing the patient to put it on over her clothes. He would then leave the room and return when Ms. Batiller had

determined that the patient was ready, with Ms. Batiller accompanying him to act as chaperone during the examination. He would then ask the patient to raise her shirt and bra while still covered with the gown and raise her arms above her head. He would then expose one breast at a time to conduct the examination. If any abnormalities were found, he might order further investigations. At the conclusion of the examination, he would leave the room and go to the reception area to jot down his findings. Ms. Batiller would assist the patient to dress and Ms. Batiller would tidy up the room. Dr. Tan said he would then return to the room to wrap up his chart entry or summarize the positive and negative findings. He would order any needed test or investigations.

[126] He stated that, if a patient were sexually active, he would refer her to a female gynecologist for pelvic examination as it was the preference of most Filipina women to have such examinations performed by a female doctor. He would perform pelvic examinations himself only if there were genitourinary complaints and then the examination would take place at a separate appointment, not as part of the general physical. He also stated that if a patient requested a Pap smear, he would do that at a separate appointment.

[127] He stated that, in 2014, it was not part of the protocol to have Ms. Batiller document her presence during a breast examination. He subsequently instituted this practice as well as obtaining a signed consent from the patient for the breast examination.

[128] Dr. Tan identified documents enrolling the Patient and her daughter in his practice in March 2013. Her spouse was also identified, with the occupation, "student."

[129] The initial history noted that the Patient was a former obstetrician/ gynecologist.

[130] He identified the form used, at that time, for a general physical examination and confirmed that it was blue. He also confirmed that, in the case of the Patient, the form indicated that a breast examination, but no examination of the genito-urinary tract, was done. Among the physical findings he noted "inverted nipples."

[131] With respect to the referral to Dr. Ray for the Pap smear, he testified that he had no personal knowledge of the referral process beyond filling out the referral form.

[132] He testified that the Patient's next appointment took place in May 2013 and that, when he learned from his secretary that she had not kept the appointment with Dr. Ray, he referred her to a different female gynecologist, Dr. Cha.

[133] A hand-written consultation note from Dr. Cha included a notation, "no mass, no pain," a finding which Dr. Tan indicated would involve an internal examination. The "bottom line" conclusion of the consultation was, "normal gynecologic exam."

[134] After reviewing some other intermediate appointments of the Patient, Dr. Tan spoke about a portion of the chart of the Patient's daughter, whom he saw at the end of April 2014 with a cough and nasal discharge.

[135] Regarding a typed entry in the Patient's chart for the May 2014 date, Dr. Tan explained that they were transitioning to an electronic medical record (EMR) at the time and that the entry would have been typed by a part-time worker; Dr. Tan would have verified it and added his electronic signature. He understood that the appointment was for a general checkup and would have jotted down his notes and findings on the blue form.

[136] He testified that, following the usual form, he would have done a complete, "head to toe" physical examination including a breast examination. He testified that there was "no indication" of any genitourinary exam, speculum exam or other pelvic exam.

[137] He unequivocally denied digital stimulation of the Patient, demonstrating to her the presence of vaginal secretions, saying to her, "Look, you are aroused," inviting her to "arousal sessions" (he said there were no such things) or offering to cover her mouth to prevent moans being overheard.

[138] He was asked whether he examined the Patient's daughter on that day and replied that he did. He was referred to a chart entry for that date and asked the purpose of the child's visit. He quoted from the chart, "General assessment...cough is better; chronic URI [upper respiratory infection]; no history of asthma." Further notes, Dr. Tan testified, represented a head-to-toe examination of the child. The only finding recorded was a papule on the right shoulder.

[139] When later asked whether he had an independent recollection of the appointment of the Patient's daughter in 2014, Dr. Tan replied that he did not. His recollection that the Patient's daughter's appointment was for follow-up of her upper respiratory infection and also for a general examination was based solely on his entries in the chart.

[140] Dr. Tan testified that it was his usual practice when a family attended to see the child before the parents and to see the mother last.

[141] When asked in cross-examination whether he had an independent recollection of the Patient, Dr. Tan replied, "Not at all."

[142] He was questioned about areas of his testimony which appeared to demonstrate an independent memory of some encounters. An example was the occasion when the Patient returned following the missed appointment with Dr. Ray. He testified that he remembered her refusal to pay the \$100 missed-appointment fee despite the fact that this appeared nowhere in his notes. He testified that after reviewing the chart he had "built memories" of the encounter.

[143] He agreed that he had seen "thousands" of patients since 2014 and that he had no independent memory of the Patient's appointment in May 2014 because "nothing significant happened." Further, he stated that when he was informed of the complaint years later, he started to form memories about the encounter.

[144] Dr. Tan testified that he had no social interactions with the Patient or her family outside of office visits and that he had no recollection of her being a "problem, or a difficult, patient."

[145] Returning to the subject of the "no-show fee," Dr. Tan agreed that the chart did not record the Patient refusing to pay the no-show fee or his having discussed it with her. He testified that he first reviewed the chart after learning of the complaint by the Patient in 2017 and that it reconstructed a memory of her coming into the office in May 2013 and discussing refusing to pay the fee.

[146] Dr. Tan was questioned about a note in the chart made by "Joy," (he could not remember the last name), a former doctor in the Philippines, who acted as a physician assistant in Dr. Tan's office for approximately two years and was

responsible for transcribing some of the electronic records. Dr. Tan insisted that he could remember the discussion about the no-show fee even though he could not remember Joy's last name at that moment.

[147] Dr. Tan testified as to whether all the findings in his hand-written notes for the Patient had made it into the EMR. For example, the notation about the Patient's waist size was not present in the EMR, but it was documented in his notes. Similar discrepancies were demonstrated in the Patient's daughter's medical record, as the EMR did not contain a record of his physical examination of the child.

[148] Dr. Tan was confronted with Ms. Batiller's testimony that the "blue form" was used only for the initial general physical exam and not for subsequent general assessments. He agreed that Ms. Batiller had been working at that clinic since it opened and had been the only employee working there other than his wife. Nonetheless, he said that he "disagreed totally" with her evidence on that point and stated that she must be mistaken. He stated that "she should know better."

[149] He was reminded of Ms. Batiller's testimony concerning the patient identification label which went on to the blue form and agreed that it was not present on the blue form for the Patient's second annual physical exam.

[150] Dr. Tan agreed that there were other discrepancies between the two blue forms (one dated March 20, 2013 and one dated for the day of the May 2014 appointment) in addition to the absence of an identification label on the second. These included the absence, on the second occasion, to any reference to "inverted nipples" or to certain other findings he had made. He testified that he had already made note of these findings, that there had been no interim change and that they were of minor significance; therefore, there was no need to make a second notation.

[151] Regarding the "yellow form" which he had used to record the findings of the Patient's daughter's general assessment in 2014, Dr. Tan agreed that it was different from the one used a year previously. He explained that his secretary had put the wrong form in the chart for the initial examination.

[152] In another chart entry where there were two parts with different handwriting, Dr. Tan identified that this note had been co-authored by Joy. He agreed that in the transcribed version he had not identified that the notes had been written by two different people.

[153] On January 22, 2020 when he had had the “meeting” with Ms. Batiller at which she testified that he had asked her for a favour, Dr. Tan disagreed that she had an appointment with him for a checkup but testified instead that it was for a diagnostic imaging procedure. Dr. Tan testified that Ms. Batiller had attended his office for an appointment with him on January 20, 2020, but that the appointment on January 22, 2020 for medical imaging was at his office, but not with him personally.

[154] He testified that, when he saw Ms. Batiller in the waiting room, he asked her if she would go, after her appointment, to take some photographs at his old clinic. He stated that he was unaware that his stepson would be there until he learned this later from Ms. Tan. Dr. Tan agreed that his discussion with Ms. Batiller about attending to take the photographs occurred in a private examination room.

[155] Dr. Tan testified that he had had discussions with his stepson about the nature of the complaint against him and the proceedings which were to take place. He denied asking his stepson to discuss the proceedings with a potential witness (Ms. Batiller). He subsequently denied having any input into which photographs were chosen to bring to the hearing.

[156] Dr. Tan agreed that, based on the Patient’s complaint to the police, he was arrested in April 2019 and charged with sexual assault. He agreed that he was released on bail under certain conditions one of which was that he was not to be alone, un-chaperoned, with any female patient. He disputed the suggestion that he was in violation of his bail conditions when, on January 22, 2020, he was alone with Ms. Batiller because, he stated, it was a “meeting,” rather than a patient encounter; he stated, “There was no physical examination.”

[157] Regarding the physical examination of the Patient conducted in May 2014, Dr. Tan agreed that he had conducted a breast examination, but that there was no written reference to “inverted nipples,” that he had examined the abdomen but that his

handwritten notes contain no reference to an abdominal examination and that he had taken her blood pressure but had “failed to jot it down.”

[158] Counsel for the College suggested to Dr. Tan that he had also performed an internal examination of the Patient, which he had likewise failed to record because the examination turned into a “very sexual exam.” He denied it absolutely stating, “Nothing would have happened.”

[159] Regarding the College investigators’ visit to Dr. Tan’s office on November 23, 2017, Dr. Tan testified that he recalled that, on that date, College investigators arrived at his office unannounced and informed him of the complaint which had been made against him. He recalled speaking with the investigators.

[160] Dr. Tan testified that the investigators obtained the Patient’s patient chart and that he was shocked to learn of the complaint against him.

[161] One of the investigators Ms. C.B, created a memo of questions asked of Dr. Tan and his responses (no recording or transcript of the conversation was kept). Dr. Tan’s counsel submitted that questions based on that memo, which had not been proven by calling the investigator to testify, would constitute inadmissible hearsay. We allowed questions concerning Dr. Tan’s recollection as to whether he made statements in answer to the investigators’ questions.

[162] Counsel suggested that Ms. C.B. asked “whether it’s common for patients to experience sexual arousal during an internal.” Dr. Tan responded, “I don’t recall answering this.” He testified, “They were pounding me with arousal, sexual arousal questions. That’s the most that I could remember.” And further, “They were pounding me (*sic*) questions over and over again.” He indicated that he did not recall being asked if it was common for patients to experience sexual arousal during an internal examination.

[163] Counsel asked whether Dr. Tan recalled advising the investigators, “When you insert something into a person’s genital organs, she can get aroused by that thing. It’s like sexual intercourse.” Dr. Tan initially testified that he didn’t recall saying that and subsequently denied saying it.

[164] Counsel suggested to Dr. Tan that he told the investigators, "The reason that you know that someone becomes aroused during an internal is because it's -- they make a noise, or a movement, or something." Dr. Tan's testimony in response was somewhat convoluted, "I would like to rephrase the arousal thing. That means when you perform a sensitive examination like breast examination and internal examination, inserting speculum, patients move. I didn't say they were aroused. During a breast examination, they make a noise." He later testified, "They make a noise; they make a move. I cannot assume that they are sexually aroused."

[165] Dr. Tan testified that he had never noticed a patient developing secretion, that no patient had ever told him she was aroused. Further, he testified that with respect to patients moving and making noise, none of that in his experience would indicate arousal.

[166] Dr. Tan denied that in response to a question of how he would know if someone became aroused, he had told the investigator "It's almost like sexual intercourse. When you probe something, you feel it."

[167] When asked if he had told the investigators that 1% of female patients, in his experience, became aroused during an internal examination, he replied that the remark had been taken out of context. What he had meant to say was that approximately 1% of his female patient population had Pap smears.

[168] Dr. Tan agreed that on November 21, 2018, he received a letter from Dr. Nancy Whitmore (College Registrar) advising him that the ICRC would consider whether to suspend or impose restrictions on his certificate. He also testified that he couldn't "recall" or "fully recollect" receiving a number of documents with that letter, one of which was the investigator's memo of November 23, 2017.

[169] Dr. Tan agreed that his counsel prepared a written response to the College's letter in consultation with him. He agreed that he would have reviewed the letter for accuracy before it was provided to the College and that one purpose of the response letter was to clarify the disclosure materials provided to him. He also agreed that one section of the response letter consisted of clarification of certain "bullet points" in the investigator's memo, including correcting the memo's suggestion that he had stated that a bimanual examination was part of a general

assessment (the letter corrected this to say it was not) and the suggestion that Dr. Tan could not identify the names of patients who experienced arousal during a bimanual examination (the letter corrected this to say that investigators demanded that Dr. Tan provide the names of patients who became aroused during internal examination and that Dr. Tan had advised that he could not recall any specific patients who could potentially have exhibited signs of arousal).

[170] Counsel for the College pointed out to Dr. Tan that nowhere in that section of his counsel's response was there a denial of the statements concerning arousal and patients getting aroused during an examination that, in his testimony at the proceeding, he denied making. Dr. Tan agreed that his counsel's letter did not dispute his having made those statements to the investigator and added that he didn't know how to respond to that because "I truly and honestly trust my counsel."

[171] In subsequent testimony, Dr. Tan eventually conceded that, while his counsel authored the response, he would, because of the review which he testified to making, bear the ultimate responsibility for any inaccuracies.

[172] With respect to admissibility and use of the statements Dr. Tan may have made to the College investigators where investigators were not called as witnesses, we considered the effect of the lack of a denial of the statements in the letter from Dr. Tan's counsel. In Justice Sopinka's leading text, *The Law of Evidence in Canada*, it states at §6.442 that silence can be taken as an admission, where a denial would be the only reasonable course of action expected.

[173] We are aware that a person may choose to remain silent for many reasons, including fear that any response might be misinterpreted or used against them in litigation. Because of the possibility of ambiguity in interpreting the lack of a response or the nature of a particular response, we as triers of fact should examine all the circumstances to conclude whether Dr. Tan behaved in such a way as to adopt the statements investigators purportedly made to him as true.

[174] In written closing submissions following the hearing, the parties addressed admissibility and use of the statements Dr. Tan may have made to the College investigators. The College asserted that Dr. Tan's failure to take the opportunity to correct any inaccuracies or deny any statements attributed to him "goes to his

credibility.” Dr. Tan submitted that the entire line of questioning related to statements he may have made to College investigators was inappropriate in that it was based on material which had not been proved by the testimony the person who created it (the College investigator). We note that we had dealt with this objection through our ruling at the time that the objection was originally made. Dr. Tan’s submissions concluded, “this entire line of questioning represents no more than a backhanded attempt to challenge Dr. Tan’s credibility and should be given no weight.”

[175] In our view, even if Dr. Tan had agreed that he had made all of the statements purportedly made to the investigator, it would establish nothing beyond the fact that he was familiar with the possibility of a female patient becoming aroused in the course of an intimate examination.

[176] However, we find that there is relevance to Dr. Tan’s denial that he made the statements in the first place. The Committee accepts that when Dr. Tan was presented with the investigator’s memorandum regarding his statements and provided with an opportunity to respond, his response (through counsel) specifically addressed various statements he believed were inaccurately recorded by the investigator in her memorandum. Dr. Tan did not, however, correct the investigator’s memorandum with respect to the matters noted above. It would have been reasonable to expect that, had Dr. Tan not made the statements, his counsel’s letter would have raised these as additional matters to be corrected.

[177] We therefore conclude that Dr. Tan’s failure to deny the statements is evidence that he made the statements. Dr. Tan’s denial on cross-examination that he made the statements to the investigator is a factor that we will consider in assessment of Dr. Tan’s credibility.

[178] When asked again about several points, including that Dr. Tan never had a chaperone during the May 2014 examination, never offered the Patient a gown or drape, inserted his fingers into the Patient’s vagina and moved them in a thrusting manner and then removed his fingers, rubbed them together and said, “Look you are aroused, I think you are aroused” and that he could cover her mouth if she moaned during arousal sessions, Dr. Tan categorically denied these allegations.

[179] College counsel then suggested to Dr. Tan that he had boasted to the Patient about arousal skills which he had acquired during his first marriage. He replied that his marriage was a personal matter and that he did not discuss personal matters with patients. However, he added, “My wife was a frustrated doctor like [the Patient].”

[180] He agreed with Counsel’s suggestion that, as it was personal information, the Patient could not have known that his first wife was previously a doctor in the Philippines, as she testified.

Assessment of credibility and reliability

[181] We are aware, particularly in a “she said - he said” dispute over events that occurred in private, of the crucial importance of the assessment of credibility and reliability, particularly of the principal witnesses.

[182] The courts have provided extensive guidance to assist in this determination. An oft-cited decision is the Court of Appeal case, *R. v. C.H.*, 2009 ONCA 56.

[183] The two elements, credibility and reliability, are not the same. Justice Watt in *C.H.* gave a brief but clear outline. Credibility and reliability are different. Credibility has to do with the witness’s veracity, reliability with the accuracy of the witness’s testimony. Accuracy engages consideration of the witness’s ability to accurately observe, recall and recount events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence.

[184] A list of questions has developed for the triers of fact to consider in assessing credibility. Some are more relevant to a criminal matter, but several are helpful in a consideration such as this. These include (in paraphrase):

- How probable or improbable is a witness’s story? Does it make sense? Was it reasonable and consistent?

- Was there any reason apparent that the witness might have an unusual interest in the outcome of the hearing? Would there be any secondary gain from “their side winning”?
- Did the witness appear to be honest on secondary issues and, if not, did that cast doubt on the main issues?
- Did the witness appear to have a good memory and to be able to make accurate observations?
- Was the oral testimony of the witness consistent with the documentary evidence? Was the evidence verifiable?
- Had the witness made prior statements inconsistent with their testimony at the hearing? Are these on matters of substance or minor details?
- Lastly, what was the demeanour of the witness’s testimony, particularly on cross-examination? Did it have the “ring of truth”? Was it responsive? Evasive? Confrontational? Was it consistent on the main points?

[185] We kept firmly in mind that the courts have warned repeatedly against overreliance on demeanour in weighing credibility, while recognizing that it is a factor that can be considered.

Credibility and reliability of the Patient

[186] The Patient appeared to us to be intelligent, well-educated and well-spoken. Although English was not her first language, she was clearly fluent.

[187] Her testimony was clear and consistent (see below) and, while it was at times emotional, the emotion appeared to be appropriate to the content of her testimony at the time and genuine.

[188] Her testimony was certainly consistent, to the point of using the same words, phrases and gestures at several points in her testimony. She explained that, in bringing back her memories of the events of May 2014 some three-and-a-half years later, she had jotted them down and subsequently developed this into a full narrative prior to contacting the College. With some factual editing after seeing Dr.

Tan's response to her complaint, the Patient testified that she was able to use this document in subsequent interviews with College investigators and with the police.

[189] Counsel for Dr. Tan submitted that the Patient had composed a "script" which she had memorized before the hearing, so that the consistency of her evidence in fact reflected the fact that her evidence at the hearing was simply her recital of the script, rather than her actual recollection of the events and that she wanted to refer to her statement "to ensure that she was keeping her story straight." Thus, Dr. Tan submitted, her evidence was neither credible nor reliable.

[190] The Committee did not accept this submission. We found the Patient's explanation for the creation and use of her notes credible and consistent with her educational background and with her former practice of recording medical records. We accepted that the Patient was testifying as to her best recollection of the events and that she was not simply repeating a memorized script.

[191] Counsel for Dr. Tan also submitted that the Patient's memory is unreliable. Counsel raised several instances of prior inconsistent statements to support the assertion of unreliability. These included at least the following:

- The Patient initially recalled that her last appointment with Dr. Tan had taken place four to five years prior to lodging her complaint and that her daughter was a certain age at the time, whereas Dr. Tan's office records establish that the appointment took place three and a half years prior and that her daughter was older than the Patient had estimated.
- The Patient testified that Dr. Tan's office telephoned her to come in for an annual physical examination in 2014 whereas the Committee finds it more probable that the appointment was made either by the Patient or her husband.
- The Patient testified that the appointment took place in the morning and that her daughter accompanied her only because her husband was asleep and that her daughter did not have her own appointment. The Committee finds, again based on documentary evidence, that the appointment took place in the afternoon and that the Patient's daughter had a separate, 15-minute

appointment for follow-up of an issue for which Dr. Tan had seen her for two weeks previously.

- The Patient testified that “because of what he did to me” she would never have permitted Dr. Tan to examine her daughter. The Committee finds, based on the documentary evidence in the Patient’s daughter’s chart and Dr. Tan’s testimony, that it was his usual practice to examine the child before the parent(s), that the child was examined on the May 2014 date and that the examination took place *before* the Patient’s examination where she alleges abuse took place. The Committee finds it reasonable that her memory of her daughter’s examination could have been “wiped out” by the more vivid memories of her own.
- The Patient reported on one occasion (to the police) that she told her husband about the appointment on returning home and on another occasion that she only told him several days later. The Committee notes that this represents another instance of the Patient’s unreliable memory with respect to dates and times.

[192] The Committee finds that each of these instances is an example of unreliable memory, fully justifying the Patient’s self-assessment that she is “not good with dates and times,” an assessment we agree with.

[193] However, the Committee finds that these are peripheral matters to which we should give only minor weight when assessing the reliability of her account of the examination and its aftermath which took place during her appointment of May 2014 with Dr. Tan.

[194] Counsel for Dr. Tan submitted that the Patient was inappropriately “argumentative” in not initially conceding some of the errors that were pointed out to her. While some of her reactions were inarguably defensive, the Committee felt that her manner was not inappropriate to the stress of cross-examination where her veracity was being challenged.

[195] With respect to the central elements of her appointment in May 2014, the Patient’s testimony was consistent, unwavering and, in some instances, supported by

documentary evidence. In several instances her memories are supported by other testimony and/or by exhibits.

[196] Her memory of being there for an annual general examination is supported by Dr. Tan's medical records, his OHIP billing and by the Edit an Appointment entry.

[197] She accurately described the layout of the office and the examining room and the fact that Ms. Tan was seated at the reception desk.

[198] Her testimony concerning the events of the physical examination and its aftermath were clear, concrete, consistent and unshaken by vigorous cross-examination.

[199] Counsel for Dr. Tan submitted that many elements of the Patient's account of that day were implausible. These would include:

- that, for fear of discovery, Dr. Tan could have behaved as described within a few feet of a busy waiting room and the reception desk where his wife was seated (although Ms. Tan testified that she could sometimes hear the sound of voices from the examining room but would be unable to make out what was being said),
- that the Patient, herself an experienced gynecologist, could possibly have permitted what was clearly an improper pelvic examination by her account,
- that the Patient would have permitted the examination, despite describing it as painful, to continue as long as it did and to resume even after the intervention of her child,
- that the activity as described could credibly have taken place in full view of a young child and
- that any Ontario doctor in 2014 could conceivably suggest conducting "arousal sessions" for patients in an office setting.

[200] The Committee agrees that several of the events described are unusual, even improbable. But "improbable" and "impossible" are not synonyms. Several of the

events described are unusual, or even improbable but in our view are not implausible.

[201] The Committee is not persuaded that, for fear of discovery, it would be “implausible” for Dr. Tan to act as described. Ms. Tan, whose intervention Dr. Tan might fear most, testified that she would be unable to make out what was being said in the examining room and would never enter it unannounced. As noted below, the fact that it would be risky for a physician to abuse a patient in the circumstances described does not mean that the physician would not have taken that risk.

[202] The Committee considered the other aspect of the sexual abuse allegation, that of “making comments of a sexual and/or inappropriate nature.”

[203] The Patient testified that, following the “examination,” Dr. Tan inquired whether she experienced orgasm and offered, if she did not, to have her join “arousal sessions” which he conducted for some of his female patients.

[204] Counsel for Dr. Tan submitted, “It is simply unbelievable that in 2014 there were physicians in the Province of Ontario conducting so called arousal sessions, booking patients in a family medical clinic to be masturbated in the middle of the day.” The Committee would agree with this statement. However, what is more believable is that Dr. Tan may have *said* there were.

[205] If Dr. Tan had derived some sort of gratification from the experience which the Patient initially interpreted as a pelvic examination, it is not implausible that he would have offered fictitious “arousal sessions” as a means of repeating the experience, particularly if he believed, as he stated, that she had been aroused by it.

[206] We find this explanation more credible than a flat denial that he said anything of the sort.

[207] To suggest, as Dr. Tan did, that the Patient’s “story” was simply a script rather than her best recollection of the events of that day raises the obvious question of motivation. Why would the Patient compose a story or script, several years after she stopped seeing Dr. Tan, of having been sexually abused by him? The

Committee heard no evidence of a civil suit or other opportunity for secondary gain or of any reason why the Patient would bear any hostility toward Dr. Tan. Indeed, there appears to be clear evidence that up to that point there had been a highly satisfactory doctor-patient relationship.

[208] The Committee recognizes, however, that Dr. Tan has no obligation to demonstrate the Patient has a motive to lie and that the absence of a demonstrated motive to fabricate does not necessarily mean there was no motive.

[209] In other words, we cannot conclude from an absence of evidence of a motive to fabricate that an absence of motive has been proven. See *R. v. Batte*, (2000), 145 CCC (3d) 449 (Ont. C.A.) at para 120-121.

[210] The College submitted, however, that the courts have recognized that the absence of any apparent motive to fabricate is one factor that the Committee is entitled to consider, along with all other factors: *R v. L.L.*, 2009 ONCA 449 (CanLII) at para 53.

November 2020 submissions on the Ontario Court of Appeal decision in R. v. M.S., 2019 ONCA 869

[211] While the matter was under reserve, the Committee requested comments by the parties on the Ontario Court of Appeal case *R. v. M.S.* and the parties submitted these in November 2020. We have considered those submissions in reaching our conclusions.

[212] In *R. v. M.S.*, at paras 12-16, the Court of Appeal indicated it is not permissible to rely on the absence of *apparent* motive to fabricate, but instead a trier of fact may only rely on the *proven* absence of motive.

[213] Counsel for the College maintained that the Committee could consider absence of an apparent motive as one factor that it may consider in assessing credibility, relying on *R. v J.H.*, 2020 ONCA 165.

[214] Counsel for Dr. Tan submitted we could not rely on absence of apparent motive. Counsel for the defence cited another recent Court of Appeal case, *R. v. A.S.*, 2020 ONCA 229, which held:

[58] Where, as here, a suggested motive to mislead is disproved, the testimony is preserved from being impugned by such motive. When that suggested motive is disproved, it is as though the suggested motive is knocked off of the scales.

[59] However, affirmative weight cannot properly be added to the scales in favour of the testimony of a witness unless there is a proved absence of motive on the part of that witness: see, generally, *R. v. Bartholomew*, 2019 ONCA 377, 375 C.C.C. (3d) 534, at paras. 22-23; *R. v. M.B.*, 2011 ONCA 76, 267 C.C.C. (3d) 72, at paras. 30-32; *R. v. L.L.*, 2009 ONCA 413, 96 O.R. (3d) 412, at paras. 16, 44. Disproving a single suggested motive to mislead – such as a desire to win custody and access – does not prove the absence of any and all motives to mislead.

[60] Accordingly, the trial judge's rejection of the sole motive considered for the complainant's testimony cannot add affirmative weight supporting the complainant's claim that she was not consenting. It is not capable in law of being a makeweight affirmatively supporting her testimony.

[215] Counsel for Dr. Tan also cited *R. v. S.H.*, 2020 ONCA 34, which held:

[11] Moreover, it is inadmissible for a trial Crown, without proving affirmatively that a complainant did not have motive to mislead, to argue in substance that the absence of a known motive to mislead adds to the weight of her testimony: *R. v. Bartholomew*, 2019 ONCA 377, 375 C.C.C. (3d) 534, at paras. 22-23. Where this occurs, the trial judge must direct the jury that this reasoning is not permissible: *R. v. M.B.*, 2011 ONCA 76, 267 C.C.C. (3d) 72, at paras. 30-32. Reasoning in this way undermines the presumption of innocence by reversing the burden of proof and fails to recognize that motives to mislead can be hidden: *R. v. L.L.*, 2009 ONCA 413, 96 O.R. (3d) 312, at paras. 16, 44.

[216] In total, counsel for Dr. Tan relied on four Court of Appeal cases (*M.S., A.S., Bartholomew and S.H.*) which direct that it is impermissible to rely on the absence of apparent motive to fabricate as a factor in assessing the complainant's credibility.

March 2021 submissions on the Court of Appeal decision in R. v. Ignacio, 2021 ONCA 69

[217] On February 3, 2021, the Court of Appeal released its decision in *Ignacio*. The parties made written submissions on this in March 2021. We have considered those submissions in reaching our conclusions.

[218] In *Ignacio*, the appellant was convicted of sexual assault and the sole ground of appeal was that the trial judge erred in concluding that the complainant had no motive to fabricate and in considering that factor to enhance her credibility. The Court of Appeal concluded that the trial judge had not found that there was a proven absence of a motive to fabricate but instead had found an absence of apparent motive to fabricate. The Court of Appeal noted the line of cases, including *Batte* and *L.L.*, that held this was one factor the judge could consider.

[219] The appellant argued that cases such as *Bartholomew* have clarified the proper treatment of the absence of evidence of motive to fabricate, which is that it should not be considered as anything more than a “neutral” factor. The Court of Appeal disagreed. It held that the comment regarding absence of apparent motive being a neutral factor was in the context of that particular case and should not be read as having revised the principles established in *Batte* and *L.L.* The Court noted:

[52] Consistent with this interpretation, in several cases following *Bartholomew* (see, for example, *W.R.*; *R. v. Mirzadegan*, 2019 ONCA 864; and *R. v. MacKenzie*, 2020 ONCA 6460F[1]), this court has confirmed that the trier of fact is entitled to consider the absence of evidence of motive to fabricate as one factor in assessing the complainant’s credibility. As in *Batte* and *L.L.*, the cases caution against placing an improper emphasis on the absence of evidence of motive to fabricate, finding a proven absence of motive when the evidence does not support such a finding, and placing an onus on the accused to prove the complainant had a motive to lie. But, assuming these errors are not present, the trier is entitled to consider the absence of evidence of motive to fabricate as one factor among many in assessing the complainant’s credibility.

[220] In a footnote to the above noted paragraph, the Court of Appeal noted “Paciocco J.A.’s comments in *R. v. A.S.*, 2020 ONCA 229 and the court’s comments in *R. v. S.H.*, 2020 ONCA 34, arguably could be interpreted as being to the contrary. However, the issue of motive to fabricate was not central to those appeals and the comments in both cases were *obiter*.”

[221] Counsel for the College submitted that *Ignacio* supports the College position that absence of evidence to fabricate is a factor that may be considered in evaluating credibility.

[222] Counsel for Dr. Tan noted that while *Ignacio* indicated that absence of apparent motive is one factor among many that may be used, *Ignacio* cautioned against placing an improper emphasis on the absence of evidence, finding a proven absence when the evidence does not support it and placing an onus on the accused to prove that the patient had a motive to lie. Counsel for Dr. Tan submitted that this is particularly compelling in the present case where no evidence was directed at the issue of motive or lack thereof at the hearing.

[223] The Committee ultimately concluded that it could consider the apparent absence of motive to falsify as one factor among many in assessing the Patient's credibility. However, as we were able to find the Patient credible independent of the question of motivation, we concluded that we assigned little or no weight to that factor.

[224] Regardless of whether the Patient had a *motive* to fabricate her evidence, are there other reasons to doubt the *reliability* of her evidence on the main issue?

[225] Dr. Tan's medical record was *not* consistent with the Patient's account of her examination, in that it did not record that he performed an internal examination, but the Committee did not conclude that this lessened the credibility of her account. It would hardly be expected that Dr. Tan would make a note in the medical record of having sexually abused a patient had he done so.

[226] If one were to accept that Dr. Tan conducted an internal examination but failed to document it, is it reasonable to conclude that the Patient misperceived what took place?

[227] Given the Patient's familiarity with physical examination and, in particular, with pelvic exams, it is inconceivable to us that she could have mistaken the substance and the manner, as opposed to the intent, of what took place. What is harder to contemplate is why she would have let what was at best an incompetent pelvic examination go on so long, but we are prepared to accept her testimony that she trusted Dr. Tan, as a doctor and as a fellow countryman "that much."

[228] With respect to the Patient's testimony concerning the one-sided conversation which took place after the conclusion of the examination, we have no way of independently verifying what was said. In particular, the phrase stated in Tagalog

which the Patient translated as offering to stifle moans if she achieved orgasm, could be understood by Dr. Tan but not by members of the Committee, other than as translated by her.

[229] However, it is clear that even if her recollection is not a verbatim account of what was said, the substance of it would be unmistakable and clearly improper. The Committee accepts her evidence of what occurred.

[230] The Committee finds, on the balance of probabilities, that his statements were made and constitute verbal sexual abuse.

[231] Dr. Tan contended that a movie called *Hysteria* served as a template for the “script” which the Patient presented to the College in 2017. She admitted having seen the film prior to coming to Canada in 2012. It is uncertain how much she would remember about the movie in 2017 but at least the name, *Hysteria*, and the fact that there were “arousal sessions” formed part of her initial questions to Ms. Greenberg at the College.

[232] The Committee heard no detailed testimony to be able to judge the similarity of the movie plot to the experience to which the Patient testified.

Credibility and Reliability of Ms. Batiller

[233] We struggled with what weight and significance we should give to the testimony of Ms. Batiller. It was clear that her English was not strong - not so much in the misunderstanding of individual words as the inability to grasp the context, the meaning and the significance of a question. This led her, on many occasions, to give directly contradictory answers to the same question repeated within a matter of seconds with no obvious intent, in the perception of the Committee, to deceive. It was also apparent that she was flustered and intimidated by many of the questions asked in cross-examination, which probably contributed to the inconsistency of the answers. It also appeared that, while she felt she owed a debt of loyalty to Dr. Tan, both as her doctor and her former employer, her answers were frequently as likely to harm his cause as to help it.

[234] The Committee also noted that many of these questions, while they might have gone to Ms. Batiller’s *reliability*, were peripheral to the central issue, the credibility

of the Patient's account of her final appointment and of Dr. Tan's testimony concerning the final appointment.

[235] The Committee did consider some questions which it felt might have some bearing on the central issue. These included:

- Is it plausible, given the extensive nature of her receptionist/secretarial duties in a very busy office, that Ms. Batiller would have been able to prepare each female patient for physical examination which might have included an intimate exam while Dr. Tan left the room, then chaperoned the exam and cleaned up afterwards?
- Is it more plausible that this routine was invariably followed or, as Ms. Batiller indicated in her will-say statement, that she attended examinations only when summoned by Dr. Tan?
- Since Ms. Batiller testified that she had no independent memory of the Patient and lacking any notation in the medical record, would it be reasonable for the Committee to conclude that she chaperoned the May 2014 appointment?

[236] The Committee concluded that, in light of the extensive nature of her duties, it is likely that Ms. Batiller attended examinations only when summoned by Dr. Tan, as she conceded on cross-examination when confronted with her will say statement. In light of this conclusion and as Ms. Batiller had no independent memory of the Patient or her appointment in 2014, we could not conclude that Ms. Batiller was present during the Patient's appointment.

[237] The Committee finds, based on her several years' experience with this routine procedure, that Ms. Batiller's testimony that the "blue form" was used only for the initial annual physical exam was more probably correct and that Dr. Tan's denial was in error. However, the Committee draws no inference of falsified or inaccurate medical records from the presence of a second blue form in the Patient's chart.

Credibility and reliability of Ms. Tan

[238] The Committee found Ms. Tan's evidence to be clear and straightforward. While she would be understandably supportive of her husband, the Committee found her evidence to be both credible and reliable.

[239] In the opinion of the Committee, the sole feature of her testimony which would have significant bearing on the main issue was her statement that, from her seat at the reception desk, she could hear the sound of voices in examining room 1, but would be unable to discern what was being said.

[240] The Committee found no reason to doubt either the credibility or reliability of that statement.

Credibility and reliability of Dr. Tan

[241] Dr. Tan spoke a mixture of English and Tagalog with the Patient and her family and testified that he clearly understood and could repeat the phrase in Tagalog which the Patient testified he had employed when offering to stifle her moans.

[242] His manner when testifying in chief was calm and straightforward. Dr. Tan provided a detailed description of his usual practice with respect to gown, drape and chaperone when examining female patients. His evidence that he would have employed that practice during the Patient's examination could not be confirmed as neither he nor Ms. Batiller (the purported chaperone) had made any notation in the medical record and both denied any current memory of the event.

[243] Dr. Tan testified that he had no independent memory of the Patient "at all," so he could only testify as to what was in his medical records and his usual practice.

[244] His testimony that his usual practice was not to conduct pelvic examinations or Pap smears as part of a woman's general physical examination was supported, at least in the case of the Patient's initial examination, by the referral to Dr. Ray.

[245] The College submitted that under cross-examination, Dr. Tan's manner became defensive and also, on some occasions, evasive or tangential. For example, he would frequently ask to be allowed to give "his side of the story" when being asked a simple, yes or no question.

[246] The Committee agrees that, in attempting to defend himself under the stress of cross-examination, Dr. Tan's answers were frequently defensive in approach. However, we note that this is a common occurrence under stress and find that the manner of Dr. Tan's responses, as opposed to their content, did not negatively affect his credibility.

[247] The fact that Dr. Tan's records contain no mention of the allegedly abusive events which the Patient describes does not damage the credibility of her account or bolster Dr. Tan's denial that they occurred.

[248] However, there were instances in Dr. Tan's testimony which did, in the opinion of the Committee, reflect negatively on his credibility. These included:

- his reliance on "built memories" to explain recalling a specific interaction with the Patient over a missed appointment fee where there was no notation in the medical record and where he had previously testified to having no recollection "at all" of the Patient;
- his ambiguous testimony concerning Pap smears; he initially testified that he would refer female patients who needed a Pap smear to a gynecologist for the procedure but subsequently testified that patients presenting with gynecologic complaints who required a pelvic exam (which might include a Pap smear) would be examined by himself at a separate appointment;
- his disputing the appropriateness of an un-labelled blue form as a record of the Patient's May 5, 2014 appointment; and
- his denial of statements allegedly made to the College investigators when he had a previous opportunity to deny them and failed to do so.

[249] The Committee finds that these instances do damage Dr. Tan's overall credibility but that they are peripheral issues of marginal assistance in the determination of the main issue.

[250] The Committee finds that the question of whether Dr. Tan's meeting alone with Ms. Batiller constitutes a violation of his bail conditions is irrelevant to these proceedings.

[251] The Committee found difficulty in applying the *Carswell* criteria to the assessment of Dr. Tan's credibility on the main issue.

[252] The incident which the Patient described took place in private, un-witnessed except by a child under the age of five.

[253] Dr. Tan's denial is absolute - not only that no abuse took place but also that no internal examination of any sort occurred.

[254] There is no documentary evidence to support either position. The Committee has already found that the absence of documentation in the medical record of a pelvic examination does not constitute proof that none occurred.

[255] In the end, the Committee concludes, its determination on the main issue will rely on the comparative credibility of the account and its denial, based largely on collateral issues (see *McDougall* below).

Motion to reopen the hearing

[256] On December 10, 2020, Dr. Tan brought a motion to reopen the hearing and sought an order stating that the release of the Discipline Committee's decision from Dr. Tan's hearing that occurred on February 3-6, 2020 be delayed until the resolution of the motion. We considered this motion in writing in January 2021 and our reasons for dismissing the motion are released concurrently with this decision.

The Legal Principles

[257] As noted in paragraph [4] above, the Notice of Hearing alleged that Dr. Tan engaged in sexual abuse of a patient and 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.

[258] The onus is on the College to prove the allegations on a balance of probabilities. As in any case, the evidence must be clear, cogent and convincing. The College must prove that it is more likely than not that the allegations occurred. There is no obligation on Dr. Tan to prove that he did not commit the conduct alleged.

[259] Section 51(1) of the Code provides in part:

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

[260] Section 1(3) of the Code defines “sexual abuse” as:

(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.

[261] Section 1(4) of the Code states for the purposes of subsection (3),

“Sexual nature” does not include touching, behaviour or remarks of a clinical; nature appropriate to the service provided.

[262] There is no statutory definition of disgraceful, dishonourable or unprofessional conduct. It is a broad catch-all provision intended to capture any improper conduct that is not caught by the wording of the specific definitions of professional misconduct. The Committee may make a finding of sexual abuse and disgraceful, dishonourable or unprofessional conduct arising from the same set of facts. Whether the conduct is disgraceful, dishonourable or unprofessional is within the specialized expertise of the Committee.

[263] The issues are enumerated above, in paragraph [7].

[264] Dr. Tan’s counsel did not dispute that the conduct complained of in respect of the purported internal examination and behaviour and remarks alleged, if it occurred (which of course is denied), would constitute sexual abuse.

[265] Indeed, in light of the well-known factors set out in *R. v. Chase*, 1987 CanLII 23 (SCC), including the part of the body touched, the nature of the contact, the situation in which it occurred and the words and gestures accompanying the act, it is clear that the alleged conduct *would* constitute sexual abuse.

[266] Dr. Tan's counsel also did not argue that this conduct, if proven, would not constitute disgraceful, dishonourable or unprofessional conduct. As this Committee noted in *College of Physicians and Surgeons v. Schwarz*, 2019 ONCPSD 9, sexual abuse of a patient violates a patient's trust, autonomy and dignity and constitutes disgraceful, dishonourable or unprofessional conduct.

[267] Similarly, Dr. Tan's counsel did not argue that the failure to provide a proper drape/gown and privacy during the breast examination (and internal examination, if there was one) would not constitute disgraceful, dishonourable or unprofessional conduct.

[268] The issue for the Committee is therefore, whether the College has proven on the balance of probabilities that the impugned conduct took place.

Decision and Reasons

[269] The Committee is aware that the submissions of counsel are not evidence and decisions must be made on evidence alone, oral and documentary.

[270] The credibility of the Patient's account of her appointment in May 2014 is central and crucial to the determination of whether she was sexually abused. Her memory, whether assisted or not, is clear and consistent. Dr. Tan's denial that there was any sexual impropriety or, indeed, that any pelvic examination took place is absolute. Neither version can be corroborated, in that there is no evidence that directly supports the key allegations of fact (see *Law Society of Upper Canada v. Neinstein* 2010 ONCA 193 (CanLII) at paragraph 69).

[271] However, the Supreme Court in *F.H. v. McDougall*, 2008 SCC 53 at paragraphs 81 and 86 held that corroboration is not necessary for the trier of fact to believe one party's testimony over another:

[81] ... Trial judges faced with allegations of sexual assault may find that they are required to make a decision on the basis of whether they believe the plaintiff or the defendant and as difficult as that may be, they are required to assess the evidence and make

their determination without imposing a legal requirement for corroboration...

[...]

[86] ..., in civil cases in which there is conflicting testimony, the judge is deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party. In such cases, believing one party will mean explicitly or implicitly that the other party was not believed on the important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant as in this case...

[272] In this matter, corroboration could come from only two sources.

[273] According to the Patient, the only third-party present during the examination and its aftermath was her young daughter. It would be unreasonable to expect a child of that age to be able to recall years later events whose significance she would have been unlikely to be able to appreciate at the time.

[274] Dr. Tan testified to his usual practice when conducting intimate examinations: to obtain consent, to provide a gown and privacy while undressing and then to leave the room and return with Ms. Batiller (the secretary/receptionist) to act as chaperone. In her testimony, Ms. Batiller described a similar protocol but subsequently agreed that she would go into the examining room to chaperone only when requested to do so by Dr. Tan.

[275] However, both Dr. Tan and Ms. Batiller denied having any independent memory of the particular appointment in question and there was no documentary evidence, such as an entry in the medical record, to indicate that Ms. Batiller was present at any point during the examination.

[276] Further, Ms. Batiller gave no evidence about chaperone practices involving internal/pelvic or pap examinations.

[277] Further, given Dr. Tan's evidence that no intimate examination occurred at all, it follows that Ms. Batiller could only have been present during the breast exam portion of the appointment (and the Patient has no complaints with respect to the

manner in which Dr. Tan examined her breasts) and would not have been present during any internal examination.

[278] The Committee also considered the *plausibility* of the Patient's account of what happened on that day.

[279] Much was made of the fact that, when seated at the reception desk, Ms. Tan was only a few feet from the examining room with thin walls separating her from it - the implication being that Dr. Tan would have been unlikely to say anything which he did not want overheard. However, Ms. Tan's testimony was that, while she could hear the sound of voices from the examining room, she would not be able to make out what was being said. To the extent that the inference is that Dr. Tan would not have assaulted the Patient or made inappropriate comments when his wife, receptionist (and perhaps other patients) were right outside and could hear if she protested loudly, the Committee does not find this to be persuasive for the same reasons noted in *College of Physicians and Surgeons of Ontario v. Ruggiero*, 2016 ONCPSD 28:

Counsel for Dr. Ruggiero further submitted that, since the rooms were close together, Patient A would have been heard if she had screamed or cried out. The Committee disagrees. This Committee has seen physicians before it who have been found to have sexually abused patients in their office during office hours. On the basis of experience, the Committee rejects the argument that a physician would not sexually abuse a patient simply because of the risk of getting caught.

[280] Similarly, in the case of Dr. Noriega (*Noriega, Re*, 2014 ONCPSD 31, aff'd 2016 ONSC 924) the Committee found that, in an examining room, in a hospital clinic also staffed by nurses, in the course of a purported pelvic examination, Dr. Noriega masturbated an adolescent girl to orgasm despite the risk of discovery.

[281] The Committee recognizes that each case is different, but simply refers to *Ruggiero* and *Noriega* to note that Discipline Committee should not reject evidence of sexual abuse that it considers credible just because the facts as described by the complainant would mean the member engaged in otherwise improbable risk-taking behavior.

[282] Similarly, we were not persuaded that the fact that Dr. Tan was aware that the Patient was an obstetrician/gynecologist in the Philippines, or that Dr. Tan was also actively treating the Patient's husband, or that the conduct is alleged to have taken place with a child in the room, somehow makes it implausible that Dr. Tan would do what is alleged. As noted, in *Ruggiero*, the fact that the physician would be taking a risk of getting caught does not make the conduct implausible.

[283] Counsel for Dr. Tan submitted that the account was a "scripted" fabrication, many of whose elements were based on the movie *Hysteria*. The Patient admitted to having seen the movie prior to coming to Canada in 2012. She clearly had some memory of the film, having asked at her initial contact with the College whether the practice of arousal sessions, *like in the movie Hysteria*, was carried on in Canada.

[284] Dr. Tan submitted that the consistency of her accounts, rather than being an indicator of reliability, represented the fact that she had memorized and rehearsed the account which she gave in testimony.

[285] However, we considered the Patient's testimony that she was "not a spontaneous person" and that she always, when she had to make a presentation, particularly in English, would write it out beforehand. The Committee considered that this was consistent with her educational background and her work history in recording medical records. Having "jotted down" her three and a half-year-old memories, she wrote a detailed narrative prior to presenting them to the College. Having made some factual corrections, after seeing Dr. Tan's reply to her complaint, she considered her account suitable to present, more or less verbatim, to the College investigators, to the police and at the hearing.

[286] The Committee accepted the Patient's evidence that she was testifying as to her recollection of the events in question and not simply repeating a story she had written down and memorized.

[287] As there is no indication in the medical record that Dr. Tan conducted an internal examination at all, there is clearly no suggestion that the Patient misconstrued a proper internal examination for improper abuse and the Committee would not so find.

[288] The Committee also does not accept that the Patient imagined or concocted the account of an internal examination, the manner in which Dr. Tan conducted the examination and his actions and comments during and following the examination. For the various reasons outlined in our assessment of her credibility and reliability, the Committee also does not accept that the Patient's memory was poor - in relation to the central elements of the alleged conduct.

[289] The Committee further considered whether it was entitled to rely on the fact that the May 2014 appointment was the Patient's *last* appointment with Dr. Tan, when her unchallenged evidence is that she had been completely satisfied with the care provided by him, not only to her but also to her family, over the roughly 13 months of their relationship. We are aware that, at most, this fact would only be circumstantial support for the Patient's evidence and would not be conclusive.

[290] What can be inferred from the fact that a patient abruptly stops seeing a physician will depend on the circumstances of the case. For example, in many cases in which a patient alleges sexual abuse during an examination, the physician acknowledges that an examination took place and suggests that the patient misconstrued a proper examination. In such a case, the fact that the complaint immediately stopped seeing the physician would be equally consistent with a mistaken belief that abuse took place as it is with the patient's evidence of abuse. However, in this case, the Patient was otherwise happy with Dr. Tan's care of herself her family. Further, Dr. Tan's evidence about the last appointment is that there was no intimate examination at all and there was nothing but a routine appointment.

[291] In this case, therefore, the Committee finds that the fact of the abrupt termination of an otherwise good doctor-patient relationship supports the inference that something unusual must have happened to cause the rupture. While this cannot be taken as proof of the Patient's account of the events, it is circumstantial evidence that is consistent with and supportive of, her account.

[292] The Patient testified that she saw a media report that the College had revoked the licence of a doctor (whom she did not name) for sexually abusing a patient. This caused the return of a flood of suppressed memories of her own abuse and led to her decision to do what she had been afraid to do in 2014 and report Dr. Tan to the

College. She testified that she felt she “needed to be braver,” lest he do this to someone else.

[293] Much was made of the implausibility of the Patient, with her professional training concerning the proper manner of conducting a pelvic examination, permitting what was, at best, an incompetent internal examination and, at worst masturbation, particularly in the presence of her young daughter.

[294] The courts have cautioned severely against stereotypical thinking with respect to victims’ reactions to sexual abuse.

[295] The Patient testified that she was “stupid” and too trusting of Dr. Tan, both as a doctor and a person from the same country of origin. She also recounted that, in the wake of realizing that she had been molested, she felt numb, withdrawn and shocked into silence. Her only motivation was to get things over with and get the two of them out of the office.

[296] The case law makes it clear that there is no such thing as a “typical reaction,” and that a wide range of reactions are not only possible but plausible. See e.g. *R. v. D.D.*, 2000 SCC 43 at para 65.

[297] It was further submitted that no rational person would believe that, in Ontario, in 2014, any doctor would be conducting “arousal sessions” for a segment of his female population. The Committee agrees. However, what is *not* implausible is that Dr. Tan, having derived gratification from his actions, might try to create a scenario in which a repetition was possible.

[298] Counsel for Dr. Tan cast doubt, frequently successfully, on the Patient’s memory of collateral factors such as dates and times. She misremembered the date of her last appointment, placing it four to five years prior to the date of her complaint and used it to miscalculate the age of her daughter at that time. She misremembered that her “morning” appointment had actually taken place in the afternoon and weakly explained that she meant it had taken place in daylight. She remembered being too numb and shocked to tell her husband about her experience on the day she returned home but instead waiting several days to tell him, but then, when she

made her report to the police, revised her account to say that she told her husband on the same day.

[299] In the opinion of the Committee, this established, at least, that the Patient was, as she herself confessed, “not good with dates and times.” However, we find that these are peripheral issues and, while they may do some damage to her overall reliability, they do not lead to a conclusion that she would be unable to recall accurately events as dramatic and traumatic as those that form the basis of the allegation of sexual abuse.

[300] The Committee has found the Patient’s account of Dr. Tan’s abusive examination and its aftermath to be credible.

[301] It is inconceivable to the Committee that Dr. Tan’s actions, as described in the Patient’s testimony, could have taken place in the presence of a chaperone.

[302] In his testimony, Dr. Tan described in some detail his routine for intimate (breast) examinations. After obtaining consent he would give the patient a gown, presumably with instructions as to what clothing (if any) should be removed. He would then leave the examining room and return with Ms. Batiller after she had determined that the patient was ready. Ms. Batiller would then remain present throughout the examination to act a chaperone, would assist the patient to dress and tidy up afterwards while Dr. Tan again left the examining room.

[303] Ms. Batiller, in her testimony, confirmed several aspects of this routine. However, she subsequently corrected her testimony that she would always be in the examining room for intimate examinations by agreeing with an earlier statement that she would be present only if summoned by Dr. Tan.

[304] There is no documentation of consent of any sort in the medical record of the Patient’s examination from May 2014 (Dr. Tan testified that he subsequently initiated a policy of obtaining written and signed consent for breast examinations.).

[305] Both Dr. Tan and Ms. Batiller testified to having no independent memory of the events of that appointment or, indeed, any independent memory of the Patient.

[306] The Committee finds, on the balance of probabilities, that no consent was sought or obtained from the Patient for her intimate examination(s) in May 2014 and that she was provided neither privacy, suitable cover or third-party chaperone and that this constitutes disgraceful, dishonourable and unprofessional conduct.

Summary of Findings

[307] For reasons stated above, and based on the balance of probabilities, the Committee concludes:

- that Dr. Tan did commit sexual abuse of the Patient by touching her genitals in a sexual manner and by making remarks of a sexual nature towards her in an appointment in May 2014;
- that Dr. Tan engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional with respect to his touching of the Patient and/or his remarks in an appointment in May 2014; and
- that Dr. Tan 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 by failing to provide privacy, gown or drape before conducting a complete physical examination of the Patient.

[308] Accordingly, the Committee finds that Dr. Tan committed an act of professional misconduct:

- 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; and
- under paragraph 1(1)33 of Ontario Regulation 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.

Immediate interim suspension

[309] Section 51(4.2) of the Code provides:

Interim suspension of certificate

(4.2) The panel shall immediately make an interim order suspending a member's certificate of registration until such time as the panel makes an order under subsection (5) or (5.2) if the panel finds that the member has committed an act of professional misconduct,

(a) Under clause (1) (a) and the offence is prescribed for the purposes of clause (5.2) (a) in a regulation made under clause 43 (1) (v) of the Regulated Health Professions Act, 1991;

(b) Under clause (1) (b) and the misconduct includes or consists of any of the conduct listed in paragraph 3 of subsection (5); or

(c) By sexually abusing a patient and the sexual abuse involves conduct listed under subparagraphs 3 i to vii of subsection (5). 2017, c. 11, Sched. 5, s. 19 (2).

[310] Subparagraphs 3 i to vii of subsection 51(5) state:

1. 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. Encouraging the patient to masturbate in the presence of the member.

vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.

vii. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the *Regulated Health Professions Act*, 1991. 2017, c. 11, Sched. 5, s. 19 (3).

[311] Given the Committee's finding, we make an immediate interim order suspending Dr. Tan's certificate of registration, until such time as the Committee makes an order under subsection 51(5) or (5.2) of the Code.

[312] The Committee requests the Hearings Office to schedule a penalty hearing pertaining to the findings made at the earliest opportunity.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. Tan*, 2021 ONPSDT 39

Date: September 10, 2021

Tribunal File No.: 18-001-I

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Romeo Banzon Tan

PENALTY REASONS

Heard: August 5, 2021, by videoconference

Panel:

Dr. Eric Stanton (chair)

Mr. Mehdi Kanji

Dr. William King

Dr. Peeter Poldre

Appearances:

Ms. Simmy Dhamrait-Sohi, for the College

Mr. Adam Patenaude and Ms. Carly Moore, for Dr. Tan

Mr. Gideon Forrest, Independent Legal Counsel

RESTRICTION ON PUBLICATION

The Tribunal ordered, under ss. 45-47 of the Health Professions Procedural Code, that there shall be a ban on the publication, including broadcasting, of the name of Patient A or any information that could identify Patient A referred to during the Tribunal hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this order.

Introduction

[1] In *College of Physicians and Surgeons of Ontario v. Tan*, 2021 ONCPSD 25, issued June 2, 2021, we found Dr. Tan committed professional misconduct under:

- subsection 51(1) (b.1) of the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18 (Code), in that he engaged in sexual abuse of a patient, and
- paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

[2] As the result of our finding of sexual abuse, we made an immediate interim order pursuant to section 51(4.2) of the Code, suspending Dr. Tan's certificate of registration until such time as the Committee makes an order under subsection 51(5) or (5.2).

[3] On August 5, 2021, we reconvened to determine penalty. These are the reasons for our decision on penalty.

Penalty

Proposed penalty

[4] The College sought a public reprimand and revocation of Dr. Tan's certificate of registration as mandated by the Code. The College also sought an order and direction that Dr. Tan comply with the College's Policy on Closing a Medical Practice, that he reimburse the College in the amount of \$17,310 for funding provided to the patient under the program required under section 85.7 of the Code and that he pay costs of \$43,110 to the College.

[5] Dr. Tan did not contest the proposed penalty.

[6] When assessing whether a proposed penalty is appropriate, we consider protection of the public, maintaining the integrity of the profession and maintaining public confidence in the College's ability to regulate the profession in the public interest. The penalty should also serve as a specific deterrent to the member and a general

deterrent to the profession, as well as, if appropriate, an opportunity for the member's rehabilitation. Other principles considered include denunciation of the misconduct and proportionality.

Evidence on penalty

- [7] The final document in the College's exhibits was a victim impact statement authored by the patient, entitled, "A Letter for Myself." In it she described the lasting emotional and psychological harm resulting from her abuse by Dr. Tan. This included feelings of shame at her meek acquiescence to the abuse and difficulties with trust and making new friends resulting in feelings of loneliness and isolation. She also described physical symptoms of anxiety when she is forced to recall the events of that day or to describe them to others.
- [8] We also reviewed 11 letters of reference filed in support of Dr. Tan, six from colleagues and five from patients. Counsel for Dr. Tan emphasized that, as the draft order on penalty was not contested, the letters were relevant only to the content of the reprimand.
- [9] Counsel for the College did not object to the admission of the reference letters but made submissions as to what regard and weight we should give them. Counsel for the College submitted that five of the patient letters contained information concerning patients' experiences of Dr. Tan which included additional facts that were never before the panel. Counsel asked that we completely disregard those portions and attribute little or no weight to the letters.
- [10] We admitted the reference letters and comment below concerning the weight to be assigned to them.

Mitigating factors

- [11] There were no mitigating factors mentioned by either party. Dr. Tan's counsel did point out that this is Dr. Tan's first appearance before the Discipline Committee but acknowledged that this is not a mitigating factor.

Aggravating factors

- [12] Aggravating factors include the egregious nature of the abuse, the fact that it took place in the presence of a young child and the long-lasting damage to Patient A described in her victim impact statement.

Relevant caselaw and legislation

- [13] Although prior decisions are not binding as precedent, we accept that as a principle of fairness, like cases should be treated alike. Moreover, major elements of the proposed penalty (reprimand and revocation) are mandated by statute in cases of sexual abuse.
- [14] Nonetheless, we reviewed the College's Book of Authorities containing several similar cases establishing the appropriateness of the proposed penalty.
- [15] In *College of Physicians and Surgeons of Ontario v. Iqbal*, 2015 ONCPSD 41 and *College of Physicians and Surgeons of Ontario v. Karkanis*, 2013 ONCPSD 14, both of which included a finding of sexual abuse and a penalty of revocation, the graphic descriptions of masturbation of patients by the members bore a striking similarity to the patient's description of Dr. Tan's behaviour at the appointment in May 2014. The statute permits no leniency for acts of masturbation.
- [16] In addition, the Code, ss. 51(2) and (5), in effect in May 2014, included s. 51(5)(iv), clearly establishing that a finding of masturbation of a patient by a member attracted the mandatory penalty of revocation and reprimand. This remains the case currently.

Reasons for Decision

- [17] We considered the proposed penalty to fulfil most of the provisions of an ideal penalty, paramount among which is protection of the public. There can be no more absolute measure of protection of the public from Dr. Tan than revocation of his licence to practise. We considered his behaviour sufficiently egregious that we would have ordered revocation even if it were not mandatory. We also note that the penalty imposed is not only in respect of the findings of sexual abuse, but also in respect of the finding of disgraceful, dishonourable or unprofessional conduct.

- [18] In reviewing the letters of support for Dr. Tan, we noted that only five writers indicated their awareness that Dr. Tan had been found to have sexually abused a patient (plus one who indicated knowledge of an “adverse finding”). Moreover, none indicated having read our decision and reasons.
- [19] We attached no weight to those portions of the patient letters that described facts regarding their own patient encounters with Dr. Tan that were not in evidence before us. In any event, we attached little weight to any of the letters of support. Dr. Tan was not found to be of “bad character” or even “a bad doctor,” but rather to have sexually abused a particular patient on a particular day. As with most events occurring in private, the authors of these letters can have no direct knowledge of those events.
- [20] Public protection will be strengthened by the order that Dr. Tan comply with the College policy, “Closing a Medical Practice.”
- [21] An order for a reprimand is also required by the Code where the member has sexually abused a patient.
- [22] This penalty, coupled with the fact that these proceedings are open both to the profession and the public, as will be the reprimand when delivered, promotes general deterrence to the profession as well as demonstrating to the public that the profession will not tolerate within its ranks a person who sexually abuses a patient.
- [23] The order for Dr. Tan to provide an irrevocable line of credit will ensure that, should the patient require counselling, the expense will not be borne by the profession in general or the taxpaying public. We consider this to be an appropriate case to make such an order.
- [24] In the matter of costs, the College asked for (and Dr. Tan did not contest) costs of \$43,110. This total represented three days of liability hearing (at the tariff rate, \$10,370 per day), \$6,000 for the penalty hearing (the rate often imposed for a half-day hearing) and \$6,000 for the half-day in January 2020 to hear an adjournment motion brought on behalf of Dr. Tan and dismissed by another member. We find this total reasonable and ordered this amount.
- [25] For the reasons provided we made the following order and direction:

1. Dr. Tan to attend before the panel to be reprimanded within thirty (30) days of the date of this Order.
2. The Registrar to revoke Dr. Tan's certificate of registration effective immediately.
3. The Registrar to place the following terms, conditions and limitations on Dr. Tan's certificate of registration, effective immediately:
 - a. Dr. Tan shall comply with the College Policy "Closing a Medical Practice."
4. Dr. Tan to reimburse the College for funding provided to the patient under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, within thirty (30) days of this Order in the amount of \$17,370.
5. Dr. Tan to pay the College costs in the amount of \$43,110 by September 6, 2021.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Tribunal File No.: 18-001-I

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. Romeo Banzon Tan

The Tribunal delivered the following Reprimand
by videoconference on Wednesday, December 14, 2022.

*****NOT AN OFFICIAL TRANSCRIPT*****

Dr. Tan,

This Tribunal has found you sexually abused your patient. Your patient, an extremely vulnerable individual, trusted that you would act in a professional manner at all times. You breached this trust.

A power imbalance exists between the physician and patient. By virtue of our profession, physicians hold a position of trust and power. Patients, on the other hand, are in a position of vulnerability. You exploited this power imbalance for personal reasons.

Dr. Tan, you abused your authority as a physician when you sexually abused your patient and failed to provide her with the decency of adequate privacy during the physical examination. Your actions demonstrate a profound lack of respect for your patient's well-being.

What makes your misconduct particularly egregious is that you sexually abused your patient in the presence of her young child.

The practice of medicine is a privilege. Similarly, self-regulation is not a right of the medical profession, but a privilege granted to it by society. This privilege must not be jeopardized by physicians such as yourself who sexually abuse their patient.

Your behaviour cannot and indeed will not be tolerated by the profession or the public. By your actions, you not only brought disgrace and dishonour to yourself but also the entire profession.

This Tribunal, the broader profession and the public you serve regard your behaviour as shameful, egregious and reprehensible.

The psychological and potential physical harm that can result from a patient being sexually abused by their physician cannot be overestimated. There is no place in our profession for a physician who sexually abuses their patient and, therefore, no penalty short of revocation of their certificate of registration could adequately protect the public while, at the same time, express the condemnation of the profession.