

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Md Ashiqul Islam, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the complainant or any information that could disclose the identity of the complainant under subsection 47(1) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

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

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

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

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

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Islam,
2020 ONCPSD 5

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

IN THE MATTER OF a Hearing directed by
the Inquiries, Complaints and Reports Committee of the
College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code** which is Schedule 2 of the
Regulated Health Professions Act, 1991, S.O. 1991, c. 18, as amended

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. MD ASHIQUL ISLAM

PANEL MEMBERS: **DR. C. CLAPPERTON (Chair)**
MR. P. PIELSTICKER
DR. K. HALLETT
MR. J. LANGS
DR. J. RAPIN

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS MORGANA KELLYTHORNE
MS PENNY NG

COUNSEL FOR DR. ISLAM:

MR. STEPHEN DARROCH
MR. HAKIM KASSAM

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. DAVID C. ROSENBAUM

Hearing dates: September 16, 17 and 19, 2019
Decision date and Release of Reasons date: February 4, 2020

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter in Toronto on September 16, 17, and 19, 2019. At the conclusion of the hearing, the Committee reserved its decision on finding.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Md Ashiquel Islam (“Dr. Islam”) committed an act of professional misconduct:

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

RESPONSE TO THE ALLEGATIONS

Dr. Islam denied the allegations in the Notice of Hearing.

BACKGROUND

Dr. Islam is an internist, who functions as a community cardiologist. Patient A was referred to Dr. Islam for cardiac-related concerns twice and saw him seven times between 2013 and 2017. The allegations of sexual abuse and disgraceful, dishonourable or unprofessional conduct arose from alleged conduct by Dr. Islam regarding Patient A in

relation to an appointment in September 2017 (“the September 2017 echocardiogram appointment”). Patient A had no concerns regarding Dr. Islam’s conduct at any of her prior appointments with him, including one on the day before (“the first September 2017 appointment”).

The College alleges that during the scheduled September 2017 echocardiogram appointment, Dr. Islam engaged in sexual abuse of Patient A by touching, behaviour and remarks of a sexual nature, including that: he hugged and/or kissed Patient A while she was partially dressed; touched and commented on her breasts without clinical indication or consent, adjusted her pants, and commented on her underwear. Specifically, the College alleges that Dr. Islam hugged and kissed Patient A twice, once at the beginning, and a second time at the completion, of the appointment. Also, the College says that after Patient A disclosed to Dr. Islam that she had chest scars secondary to the removal of breast implants, Dr. Islam pushed her breasts together using his bare hands, and then stated, “They don’t look too bad”. The College also alleges that Dr. Islam touched and pulled down the elastic band of Patient A’s pants without clinical indication or consent, that he referred to her underwear as “granny panties”, and that he asked Patient A questions about her sex life, including whether she was “dry down there”.

As well as the allegations of inappropriate remarks and conduct as noted above, the allegation of disgraceful, dishonourable or unprofessional conduct relates to the content of a letter dated later in September 2017 (“the second September 2017 letter”) from Dr. Islam to Patient A’s primary care physician, which was received in mid-October 2017. The letter contained no relevant medical information; rather, it described Dr. Islam’s account of the September 2017 echocardiogram appointment. The College alleges that this letter was inaccurate.

THE ISSUES

The issues in this case are:

1. Did Dr. Islam engage in sexual abuse of and/or disgraceful, dishonourable or unprofessional conduct towards Patient A, during the September 2017 echocardiogram appointment, including by:
 - a) hugging and/or kissing Patient A, including while she was partially clad;
 - b) making remarks of a sexual and/or inappropriate nature to Patient A;
 - c) touching, moving, and/or lifting an item of Patient A's clothing without clinical indication and/or consent; and
 - d) touching Patient A's breasts without clinical indication and/or consent?
2. Did Dr Islam send an inaccurate consultation letter regarding Patient A to a colleague, and if so, did that constitute disgraceful, dishonourable or unprofessional conduct?

THE EVIDENCE

The Committee heard from four witnesses: Patient A, Witness A (administrative assistant to Patient A's family physician), Witness B (Patient A's spouse), and Dr. Islam.

A Joint Brief of Documents was presented to the Committee and entered as an exhibit at the hearing. It included Patient A's medical records from Dr. Islam's office; the Emergency Room (ER) discharge referral to Dr. Islam that gave rise to the September 2017 echocardiogram appointment; other ER discharge referrals and echocardiogram reports received by the College, excerpts from Patient A's chart as maintained by her family physician; photographs of Patient A's telephone call display; and Dr. Islam's Day Sheets for the two consecutive days in September 2017 when Patient A attended. Other documents that were entered as Exhibits included: a Brief of Photos that presented various views of the inside and outside of Dr. Islam's office; a Brief of Screenshot Photos

from Dr. Islam's phone of calls received from Patient A; and the College's Policy regarding "Maintaining Appropriate Boundaries and Preventing Sexual Abuse".

The Facts

i) Patient A's Testimony

Patient A testified that in September 2017, she was in her 70s. She had been diagnosed with a "leaky valve" in 2016 or 2017. Dr. Islam was her cardiologist. She first saw him as a patient in 2013.

In late August 2017, Patient A was referred to Dr. Islam after presenting to a hospital ER with chest pain. She attended at Dr. Islam's office on the day before the September 2017 echocardiogram appointment. Patient A recalled Dr. Islam listening to her heart. She stated that she was not aware of her leaky valve on that day, and that Dr. Islam did not give her any diagnosis. On cross-examination she acknowledged that the first time she had become aware of the leaky valve was from Dr. Islam in 2013. Patient A understood that she was to return the next day for an echocardiogram. She recalled Dr. Islam having performed two echocardiograms on her previously, although her chart said there had been three previous echocardiograms, not two.

Patient A testified that her husband drove her to the September 2017 echocardiogram appointment. She walked into the appointment herself while her husband parked the car. She was wearing a summer top and a pair of shorts that came to her knees. She was feeling a "little anxious"; when asked what her level of anxiety was, she said she had "ordinary curiosity, nervousness". She recalled expressing to Dr. Islam as they walked into the examination room, "I hope everything will be okay, that there is nothing wrong with my heart".

Patient A testified that in the examination room, Dr. Islam gave her a gown and told her to take off all her clothes from the waist up. Dr. Islam left the room, returning without notice while she was still wearing her bra. Patient A testified that while she was wearing her shorts and bra, Dr. Islam “put his arms around” her and hugged her briefly, and kissed her left cheek, without notice or her consent. (As will be discussed below, Patient A testified that Dr. Islam kissed her twice during the appointment, once on the cheek and once on the neck, but she was unsure of the order.) Patient A testified that she did nothing to prompt such action. She did not squeeze or hug Dr. Islam back. She then asked Dr. Islam if he was going to leave so she could finish getting undressed. He then left, and she finished getting undressed. She put on her gown and left it open in the front as Dr. Islam had instructed, and told him that he could come back in. At his instruction, she then proceeded to lie down on a bed, on her left side, facing the wall, while Dr. Islam performed an echocardiogram examination on her.

According to Patient A, at a certain point during the examination, Dr. Islam asked her to turn on her back, which she did. At this point, her breasts were uncovered. Dr. Islam saw scars around her breast, and asked what they were. Patient A replied that she had undergone surgeries and had breast implants; she believed that none had been successful, so she had the implants removed. She told Dr. Islam that she was not happy with the appearance of her breasts. Patient A testified that Dr. Islam then, without notice, took one of her bare breasts in each of his bare hands and pushed them together so they were touching, saying “They don’t look too bad.” He did not ask for her consent to touch her breasts, and she did not give her consent.

Patient A testified that at another point during the echocardiogram, while she was still lying on her back, Dr. Islam felt the hem of her shorts and asked her what kind of material they were. He then lifted the elastic band of the pants, again without notice or her consent, and commented, “Oh, you’re still wearing granny panties”. At another point, he asked her about her marital and sex life and asked her if she was “dry down there”, which she understood to be a reference to her vagina. When she replied that she did not think

she was, he told her, "There's things that you can buy to help that issue". Patient A also testified that Dr. Islam told her that sex was a very important part of married life. On cross-examination, defence counsel suggested that Patient A had told the College investigators that she, not Dr. Islam, was the one who said, "There's things you can buy". While she acknowledged having told that to the investigators, she maintained that it was Dr. Islam who made the comment, not her.

Patient A stated that after the echocardiogram was complete, Dr. Islam showed her a few images from the ultrasound. He did not offer to leave while she dressed; he told her that he was going to turn and look at the monitor with his back to her while she was getting dressed. There was no screen or curtain between them. On cross-examination, Counsel showed Patient A photographs of the examination room that showed a drawn curtain between the examination table and Dr. Islam's monitor. While allowing that it was possible the curtain was there and just not drawn, she confirmed that she did not see a curtain in the room on the day of her examination.

Patient A testified that while she was putting her bra on, Dr. Islam got up, faced her, and gave her another hug and kissed her. She initially said that the kiss was on her neck, but she then was unsure whether the first kiss (at the start of the appointment) was on the cheek and the second kiss was on her neck, or vice versa. She testified that the second kiss happened without notice or her consent. Patient A then asked Dr. Islam if he was going to go out so she could finish getting dressed, and he left the room.

On cross-examination, Patient A reiterated that one kiss was on the cheek and one was on the neck. However, in an email that she sent to her former primary care physician a few days after the September 2017 echocardiogram appointment, she referred to only one kiss, and in an interview with College investigators, she said that there had been two kisses on the cheek. She also acknowledged that although she now had a specific recollection of having been kissed on the neck and on the cheek, she had not always had that recollection, and her recollection of events had changed.

Following the appointment, Patient A scheduled a stress test at Dr. Islam's instruction, and she then left the office. She testified that she told her husband, her children, her lawyer, some friends, her current and former primary care physicians about the September 2017 echocardiogram appointment, in all cases within a few days of the appointment. Her husband cancelled the appointment for the stress test.

Patient A testified that Dr. Islam or his office staff contacted her by telephone four times after the September 2017 echocardiogram appointment. She did not answer those calls. Over the following months, she inadvertently called Dr. Islam after pressing redial on her phone "several times". She did not speak to him and hung up as soon as she realized she had called Dr. Islam's number.

(ii) Testimony of Witness B (Patient A's spouse)

Witness B is the spouse of Patient A and was in his 60s at the time of the September 2017 echocardiogram appointment. Witness B drove Patient A to the appointment. He dropped her off and then went to park the car. Witness B testified that Patient A's demeanour was normal on the evening before and on the day of the appointment.

When Witness B arrived at Dr. Islam's office after parking the car, his wife was already in the back room. He remained in the waiting room throughout the rest of the appointment. He testified that he recalled a man (whom he subsequently realized was Dr. Islam) coming into the waiting room to look around, but the man left. There was no conversation between them.

Witness B testified that after the appointment ended, Patient A came out to the waiting room and made a follow-up appointment. She then said she was ready to go. The following day, she told him about the September echocardiogram appointment. After hearing Patient A's description of the events of the appointment, he insisted that the

follow-up appointment for the stress test be cancelled. Witness B called Dr. Islam's office to cancel the appointment.

Witness B has not had any subsequent communication with Dr. Islam or his office.

(iii) Testimony of Witness C (Patient A's primary care physician's Medical Assistant)

Witness C started working for Patient A's primary care physician in 2009 as his medical receptionist. She testified that Patient A called the office in September 2017, to schedule an appointment. Patient A said that she needed to see the doctor urgently to discuss a new referral. An appointment was made for the following day, and Patient A attended.

Witness C confirmed that in 2017, faxes received at their office contained the time and date of receipt printed at the top of the paper. She identified a six-page fax from Dr. Islam's office that she said their office received in mid-October 2017. The fax consisted of two letters from Dr. Islam addressed to Patient A's primary care physician, as well as two pages of test results. The first letter was dated for the day of Patient A's first September 2017 visit to Dr. Islam, and reported on Patient A's visit that day and Dr. Islam's recommendation to repeat the stress test and echocardiogram. The second was dated later in September 2017. It read as follows:

Re: [Patient A]
DOB: ...
Addendum/Incidence:

[Patient A] presented for an echocardiogram to re-evaluate her mitral regurgitation. She was seen the day before after she was referred to me from the...emergency room where she presented [in] August...with atypical chest pain.

As patient was walking with me in the hallway, she mentioned that she was crying all day and night prior to this visit thinking that her mitral regurgitation might have worsened. I mentioned to her that during the physical examination the day before, there was no suggestion of worsening.

However, she mentioned that she probably misheard. After entering the echocardiogram room, I gave her a gown to change and asked whether she would want her husband in the room with her. She seemed quite reluctant so I did not invite him in. Before I left the room, [Patient A] began to cry and broke down. I then offered my shoulder, she hugged me and I hugged her back stating things would be okay and there is nothing to much worry [sic]. She then mentioned that I have no idea how much she worried about her health. I then left the room and came back after she had changed. She had already had previous echocardiograms so I basically mentioned for her to turn on her left side and I commenced doing the echocardiogram. The patient again started to cry and began to discuss her marriage, sexual life and home environment in confidence. I did advise her about talking to her family physician in seeking different options available if she chose to. She did mention that alternatives did not help in the past and she wasn't sure about what more she could explore. During the echocardiogram, she also mentioned about her failed breast surgeries in the past regarding augmentation. I did respond to these questions and worries in a professional positive manner. After the echocardiogram, she changed and I did pat her back saying not to worry and we would be scheduling a stress test as soon as possible to evaluate her chest pain.

On September [date], the patient called and cancelled her stress test booked for September [date] and declined to reschedule. My office did call a few times to find out the reason behind this cancellation. My secretary and myself have not been able to get an answer. However, on September [date], the patient's husband left a message stating that she no longer requires my services and would see a different cardiologist.

(iv) Dr. Islam's Testimony

Dr. Islam is a 54-year-old internist. He completed his medical training and internship in Bangladesh, then obtained an internal medicine residency in Illinois, and a critical care fellowship in Minnesota. While he was in Minnesota, he trained himself in echocardiography. Dr. Islam subsequently moved to Prince Albert, Saskatchewan, where he practised internal medicine and critical care until 2010. Dr. Islam received his certificate of registration from the College on September 18, 2009. Dr. Islam maintains hospital privileges with Lakeridge Health in Oshawa and Bowmanville, and has an outpatient practice where he performs investigations that include stress tests, echocardiograms and Holter monitor tests.

Dr. Islam testified about photographs showing the location of his office and the office layout. He reviewed photographs of the room where he performs echocardiograms. He identified a sliding curtain in the photographs as a privacy screen. Dr. Islam stated that it had been in the room since August 2017. He described it as creating a private area so that when he is processing the image from an echocardiogram, he does not see the patient. This saves time as it means he does not have to leave the room after he performs the echocardiogram, while the patient is changing.

Dr. Islam testified that his practice when doing an echocardiogram on a female patient is to ask the patient to remove clothing from the waist up, and put on a gown with the front open. He instructs the patient that he will knock before coming back into the room, and if the patient is ready, she should say, "Yes", and he will come in. He described the process of conducting an examination. He instructs the patient to lie on the table on her back; he then applies the leads and attaches them to the electrocardiogram machine. He then asks the patient to assume another position. He described the various positions he needs the patient to assume in order to perform a full study. Following the study, Dr. Islam's practice is to remove the leads, provide a towel to remove any remaining gel, then ask the patient to change behind the screen. While the patient is changing back into their clothing, Dr. Islam processes the images and/or works on his note.

Dr. Islam first met Patient A in November 2013. He performed a physical examination and an echocardiogram, followed by a stress test and Holter monitoring, on different days. He discovered that Patient A had a leakage in the mitral valve, which he referred to as a "mild abnormality". He relayed this to her. His impression at the time was that she "was anxious" and "required a lot of assurances". He did another echocardiogram in September 2014; his findings were unchanged from those of the year before. He repeated the echocardiogram in April 2016. Since it showed no change, he saw no need for any further investigations.

Patient A was referred back to Dr. Islam in August 2017 by an ER physician after Patient A attended the ER complaining of chest pain. He saw Patient A at the first September 2017 appointment . He asked her questions about her complaints and examined her, and he then arranged to repeat the echocardiogram the next day and to conduct a stress test. He described Patient A that day as “quite worried” about her chest pain and that “something bad is going to show this time”.

Dr. Islam testified that at the September 2017 echocardiogram appointment, he greeted Patient A and then walked with her to the echocardiogram room. While they were proceeding to the room, Patient A asked him, “Can you be my doctor?”. He responded by saying that he was not a family physician but could be involved “as long as you need for internal medicine or cardiac cares”. As they got to the entrance to the echocardiogram room, Patient A told him that she had difficulty sleeping the night before and all day the day before due to worry, and that she had been crying throughout the night due to worry about her health. Dr. Islam described that as “a little surprising” given that he had told her the day prior that he did not think there was anything alarming or that anything had changed.

Once they arrived in the echocardiogram room and while Dr. Islam was reassuring Patient A, he gave her a gown, and then she “just broke down right there and started crying”. Dr. Islam testified that it looked as if Patient A “needed some consolation or some sort of support”, and so he then raised his right hand and patted her back and shoulder while verbally reassuring her. He described this hug as “really in support” and “a necessary thing”. He said that it would have been rude or inhumane not to offer his shoulder to her. While he was doing this, Patient A suddenly grabbed and hugged him tightly around the mid-abdomen with both hands. He testified that he then “lightly hugged her back” while saying, “Things will be fine. Just don’t worry”. At this point, Dr. Islam thought he heard Patient A’s husband and asked if she wanted her husband in the room, to which she responded that she didn’t care. So, he didn’t invite her husband into the room. He then left the room and closed the door. He told Patient A that he would knock

on the door when she was ready. He returned three to four minutes later. By that time, she had changed into her gown.

Dr. Islam denied Patient A's testimony that he hugged and kissed Patient A before she was completely changed into her gown; he stated that "[i]t never happened". He said that he would never enter the room without knocking when a female patient was changing. He testified that he did not kiss Patient A, and when he hugged her, she was fully dressed.

After Dr. Islam re-entered the room, he told Patient A how he was going to conduct the test. As he was putting the leads on, Patient A shared more of her worry about her health. Dr. Islam then positioned Patient A with her back towards him, and started the examination. She again expressed worry, and Dr. Islam asked whether she had spoken to her husband about the fact she was so worried. Dr. Islam recalled that Patient A mentioned some marital difficulties, including difficulties with communication and with intimacy. He asked if she had shared her marital concerns with her family physician. Patient A replied that when her family doctor performed Pap smears, she asked him why he kept doing them because "There's nothing going on down there"; she then started crying again. Dr. Islam asked Patient A if she had discussed other options with her physician or anybody who could provide professional help. Patient A replied that because she was religious, if she masturbated, she would have to confess, and "I don't know the toys and stuff, I don't know where to get them or where to buy them or how to use them".

Dr. Islam testified that following this discussion, he explained that he does not have the expertise to help her with these issues but advised her to discuss them further with her husband and family physician. He asked if she would be telling her husband that she had this discussion with him. He denied that he ever told her not to tell her husband.

Dr. Islam acknowledged that he could have tactfully stopped the conversation about Patient A's sex life earlier, although he felt at the time it would have been rude "to just

stop her like that". He described himself as a passive listener in this part of the conversation and sometimes asking questions to ensure she was getting appropriate help. He acknowledged on cross-examination that he had no clinical reason for asking Patient A, in the context of the discussion about her sex life, whether she explored other options or aids.

For the second part of the echocardiogram, Dr. Islam asked Patient A to reposition herself onto her back, facing the ceiling. While she was on her back, Dr. Islam noticed, and asked Patient A about, surgical scars on her chest. Patient A explained that they were from prior breast surgeries and implants. She stated that she had had more than ten breast surgeries and complained that the doctors had "destroyed [her] breasts". He asked her why she required all these surgeries. Dr. Islam testified that he observed that more of her chest was exposed than needed to be, so he closed the gown and "brought the edges of the gown in the middle". At that time, he commented about her breasts, that "They seem okay". He thought it was an appropriate comment to make because she was self-conscious about her body. He denied that he touched Patient A's breasts.

Dr. Islam testified that while Patient A was still lying on her back and at the completion of the echocardiogram study, he reassured her of her good health. It was then he observed that her jogging pants had been pulled down a bit, exposing her underwear. Dr. Islam described covering that portion of the underwear, and saying to Patient A, "Oh, sorry, your granny panty was showing". Dr. Islam admitted that upon reflection, his comment was unwarranted and uncalled for, and he apologized for making it. He had intended to make her laugh and it failed. He admitted that he did not ask for permission before touching her jogging pants.

Dr. Islam testified that he handed Patient A a towel and asked that she change behind the screen. He acknowledged that he did not know whether she was behind the screen when she changed, and he did not remember if he had pulled the screen shut. However, he was not looking at her while she changed, because he was looking at images on the

monitor. After she changed, he reviewed the images with her, reassuring her that there had been no change from prior studies. He then stood up halfway, again put his hand on her back and patted it, saying, "You'll be fine". He then advised her to book a stress test on her way out, which she did. She then left the office.

Dr. Islam stated that he probably would not now do the second pat on the shoulder, but he did it based on how depressed and anxious Patient A was that day.

Dr. Islam was concerned and puzzled when Patient A called and cancelled the stress test appointment without rebooking, given her concerns about her health. He also described as "strange" a call that was received from Patient A's husband advising that they did not require his services anymore. That is why he tried to telephone Patient A several times after the September 2017 echocardiogram appointment. On cross-examination he acknowledged that one of his concerns when he received the message from Patient A's husband was that Patient A had cancelled her stress test appointment in response to something that had happened during the September 2017 echocardiogram appointment; he thought that the inappropriate conversations he had with her might be a reason that she cancelled the appointment.

Dr. Islam testified that given the cancellation of the stress test and the call from Patient A's husband, he thought that he should document what had happened at the September 2017 echocardiogram appointment. That is one of the reasons why he dictated his letter addressed to Patient A's family doctor; other reasons were that his investigations had not been completed and Patient A's chest pain needed to be evaluated, and he felt that the family doctor should know all the things that Patient A had told him because the family doctor was the only person who could do something about them. He delayed sending this letter, as well as an earlier letter that he dictated the day of the first September 2017 appointment, because he was not in the office to sign them, and because he was "still in the dark" as he had not been able to speak to Patient A and did not know why she cancelled, and he "wanted to wait and see what transpires". He faxed

both letters together as a package, along with the test results, in mid-October after he received Patient A's complaint to the College.

THE LAW

The burden of proving the allegations in a disciplinary hearing is on the College. The standard of proof required was established by the Supreme Court of Canada in *F.H. v McDougall*, 2008 SCC 53: the allegations must be proved on the balance of probabilities, by evidence that is clear, cogent and convincing.

The Code defines "sexual abuse" of a patient by a member as:

1. Sexual intercourse or other forms of physical sexual relations between the member and the patient,
2. Touching, of a sexual nature, of the patient by the member, or
3. Behaviour or remarks of a sexual nature by the member towards the patient.

The Code clarifies that "sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

The Supreme Court of Canada's decision in *R v. Chase*, [1987] 2 SCR 293 sets out an objective test for determining whether touching is of a sexual nature:

"Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer?"

Paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* ("O. Reg. 856/93"), defines an act of professional misconduct by a member as: "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."

Credibility and Reliability

In considering the evidence of the witnesses, the Committee must consider both the witnesses' credibility and the reliability of their evidence. Credibility relates to the honesty of the witness; that is, the witness' willingness to speak the truth as s/he believes it to be. Reliability relates to the witness' ability to accurately observe, recall and recount the events upon which s/he gives evidence.

Credibility and Reliability of Patient A

Patient A presented as credible and sincere despite being mistaken about or unable to remember some details. The encounter with Dr. Islam at the September 2017 echocardiogram appointment was clearly a negative experience for her.

Patient A's testimony contained some inaccuracies and inconsistencies. For example:

- Patient A did not accurately recall the number of appointments she had at Dr. Islam's office. She testified in chief that she believed she saw him a total of three times, including twice in 2017. During cross-examination, Patient A remembered one visit in 2013, one in 2014 and one in 2016, in addition to the two in 2017. She did not initially recall having been at his office three times in 2013, which is what the medical records show. When pressed, she acknowledged that she did remember three visits in 2013, but when counsel suggested that she saw him on six prior occasions, she said she could not answer and was very confused. The Committee was satisfied that her initial recollection of having seen Dr. Islam once in 2013 was attributable to the fact that she considered one full evaluation (i.e., examination, echo and stress test, all of which were done separately) as one single visit. In any event, the Committee did not consider that this small discrepancy in remembering the number of prior visits vitiated Patient A's credibility or the reliability of her evidence.

- Patient A's recollection of the physical space at Dr. Islam's office was inconsistent with photographs provided by Dr. Islam. Specifically, Patient A denied that there was an examination table in Dr. Islam's consultation room; and she was certain that only Dr. Islam's name was posted outside of the clinic door. Physical details of the office were likely not memorable to Patient A, affecting her recollection of it.
- Patient A recalled Dr. Islam applying "quite a lot" of cardiac leads to her before she underwent the echocardiogram. When counsel for Dr. Islam challenged her on this, she said she would think it was more than three, but maybe not, that it could have been three, that her impression was there were more, but she did not know. The Committee notes that undergoing an echocardiogram is out of the usual experience of a layperson, so it would not expect someone to be knowledgeable about all aspects of the test, such as how many leads were applied.
- Patient A testified in chief that she telephoned her former (then retired) primary care physician to tell him about the September 2017 echocardiogram appointment. On cross-examination, she acknowledged that she informed him by email, not by telephone. Again, the Committee considered this to be a minor discrepancy which did not detract from her credibility or the reliability of her evidence.
- Patient A's explanation for the repeated phone calls from her phone to Dr. Islam's phone after the September 2017 echocardiogram appointment did not appear credible to the Committee. The Committee had difficulty understanding how that mistake could occur repeatedly, and why Patient A would have kept Dr. Islam's numbers on her phone after the first misdial. That said, even if the phone calls from Patient A to Dr. Islam were not made accidentally, the Committee was satisfied that her evidence on this point did not detract from the reliability of her account of her interactions with Dr. Islam at the September 2017 echocardiogram appointment.

- Patient A testified that it was Dr. Islam who said “there are things you can buy...” for vaginal dryness. However, in her interview with College investigators, she said that she was the one who made that statement. The Committee acknowledges that this was an inconsistency but considers it to be minor. Dr. Islam does not deny that they discussed Patient A’s sex life, and it really does not matter who made the statement.

In summary, the Committee concluded that the inaccuracies and inconsistencies in Patient A’s evidence as described above were not significant or determinative of her credibility or the reliability of her evidence about the key issues in the case. Patient A presented as honest and she candidly admitted when she made mistakes in her previous statements. Her testimony regarding the core issues of the inappropriate touching and sexual references was consistent throughout her testimony. There is no evidence that she had any motive to falsify her testimony. Nevertheless, as will be discussed below, the Committee found some of her testimony about the key issues in the case not to be reliable.

Credibility and Reliability of Dr. Islam

As will be discussed in more detail below in setting out the Committee’s findings, the Committee did not find Dr. Islam to be credible in several material aspects of his testimony.

In his testimony, Dr. Islam painted a picture of Patient A as being very anxious, beginning with her first visits in 2013. As noted above, he testified that his impression of Patient A at the visits in 2013 was that she was “anxious” and “required a lot of reassurances” about her heart. However, Dr. Islam’s letter from December 2013, to Patient A’s family doctor did not refer to any need to provide “a lot of reassurances”; he indicated that Patient A “had some concerns about the mild MR [mitral regurgitation] and I have reassured her regarding this”. The Committee was not convinced that a mild and

common cardiac finding would warrant such a strong reaction that it would remain in the physician's memory years later. The Committee does not find on the evidence that Patient A required "a lot of reassurances" in 2013. There is also no evidence that when Patient A attended Dr. Islam's office for the echocardiogram scheduled in September 2014, she expressed any concerns or anxiety.

The Committee found Dr. Islam's description of Patient A's level of distress at the September 2017 echocardiogram appointment to be exaggerated and inconsistent with the objective evidence. Dr. Islam had already performed three echocardiograms on Patient A, and Patient A was familiar with the process. She felt comfortable going into the appointment alone. She had seen Dr. Islam the day prior, and his dictated history and physical examination on that date did not document any current or recent anxiety. Dr. Islam wrote that he reviewed the family and social history from previous notes, thereby suggesting that no new social or family concerns were apparent at that appointment. Dr. Islam also did not include anxiety as a potential differential diagnosis. The Committee noted that according to Dr. Islam's evidence, at the end of the first September 2017 appointment he reassured Patient A that everything looked fine on the physical examination, and that there was no suggestion her heart condition had worsened. On cross-examination, he agreed he had given Patient A no reason to be anxious about her echocardiogram that was scheduled for the next day. In the Committee's view, it is reasonable to expect that had Patient A been particularly anxious about her heart, this would have been more apparent at the first September appointment than at the September 2017 echocardiogram appointment .

Furthermore, there was evidence that while performing the echocardiogram, Dr. Islam invited a technician into the room while Patient A lay partially-clothed on the examination table. Had Patient A been as emotionally distraught as Dr. Islam purported that she was, it would have made no sense for Dr. Islam to have done this. Dr. Islam's testimony that Patient A was crying intermittently throughout the September 2017 echocardiogram

appointment but coincidentally stopped crying while the repairman was in the room is not credible.

There was evidence that Patient A had an anxiety disorder and depression. She acknowledged this in her testimony, although she stated that she was much improved from how she used to be. The evidence also showed that these conditions were controlled by medications, as stated in a letter written by Patient A's current primary care physician that was shown to her on cross-examination. The Committee, therefore, concluded that although Patient A has an anxiety disorder, it does not mean that she was as anxious at her September appointment as Dr. Islam portrayed her to be.

The Committee was also troubled by both the content of Dr. Islam's September 2017 letter to Patient A's primary physician and by the timing of his sending both it and the previous September 2017 letter. The Committee noted that on all prior visits with Patient A, Dr. Islam dictated consultation and follow-up notes on the same day as the appointments, and promptly faxed them to Patient A's primary care physician. In his testimony, Dr. Islam acknowledged that he frequently prepared these letters while patients were dressing. He did not dictate his letter giving an account of the September 2017 echocardiogram appointment until eight days later, and he did not send either that letter or the letter he dictated about the first September 2017 appointment until mid-October. The content of Dr. Islam's second September 2017 letter was vastly different from all his other written communications. The information contained in that letter was not medical.

Dr. Islam attributed the eight-day delay in dictating a note regarding the September echocardiogram to a feature on his new echocardiogram unit that created a printout of the specific cardiac ultrasound measurements. Dr. Islam contended that this printout relieved him of the need to provide a dictated summary of his findings. The Committee does not find this explanation convincing, as Dr. Islam did not forward that printout to the primary care physician until mid-October 2017. Dr. Islam also did not interpret those

findings for the primary care physician as would be expected, and as he had done after prior echocardiograms. Further, Dr. Islam's actions would suggest he delayed sending his letter while waiting to hear what Patient A's primary concern or complaint was after being notified that his medical services were no longer required.

In the Committee's view, while some delay in sending the second September 2017 letter might have been due to the reasons Dr. Islam gave (and was acceptable from a clinical perspective, given the non-concerning cardiac findings), the fact that he held onto the letter for almost a month before sending it, in comparison with his prior practice, suggests that he was worried about what had occurred during that appointment. The letter was vastly different in content and timing of dictation from his documented practice pattern. This would indicate that the motive was self-preservation rather than relaying relevant medical information. If he was no longer taking care of Patient A then the most important medical issue is to relay what if any follow-up is recommended, and if any precautions are required. Given Dr. Islam's alleged concern about Patient A's anxiety, mental and sexual health, one would have expected his communication with the family doctor to have been urgent. It is the Committee's opinion that the content of the letter and Dr. Islam's attempt to rationalize his thinking and motivation for this letter greatly compromised his credibility.

FINDINGS

(i) The alleged hugs and kisses

Both Patient A and Dr. Islam testified that Dr. Islam hugged Patient A during the September 2017 echocardiogram appointment, but they differed in their versions of events. According to Patient A, there were two hugs, they were unprompted by her and they occurred while she was partially undressed. She also said that she did not return the hugs. According to Dr. Islam, he offered a light and supportive hug early in the appointment to provide consolation or support to his distraught and anxious patient, who

was fully dressed, and it was Patient A who grabbed him and hugged him tightly. He described the second act of touching as a pat on the back while reassuring the patient, again while she was fully dressed.

The Committee finds, based on the testimony of both Patient A and Dr. Islam, that Dr. Islam hugged Patient A twice during the September 2017 echocardiogram appointment, once near the start of the appointment and once near the end. The Committee did not accept that Patient A was only partially dressed when Dr. Islam hugged her. Her testimony that she was, was inconsistent with her statement to her family doctor, five days after the appointment, that Dr. Islam had hugged her in a show of support. (Although Patient A denied that she had told her family physician that, she agreed that it made sense that what was in the notes was based on what she had told him.)

The Committee was satisfied that the hugs did not constitute touching of a sexual nature. The Committee finds Dr. Islam's description of his motivation for the hugs, to comfort a worried patient, to be credible. Although the Committee did not find that Patient A was as anxious as Dr. Islam portrayed her to be, she was, by her own admission, feeling "a little anxious". However, Dr. Islam described being "hugged tightly" by Patient A, and he ought to have been extra cautious about his behaviour and comments given Patient A's vulnerability. The onus was on Dr Islam to maintain an appropriate professional boundary. Some patients may welcome a hug, while others may perceive it as an invasion of privacy or a sign of attraction. Given the alleged "tight hug", Dr Islam ought to have been very cautious before touching Patient A the second time. For these reasons, Dr Islam's behaviour constitutes disgraceful and unprofessional conduct.

Patient A testified to receiving two kisses from Dr. Islam during the appointment; Dr. Islam denied having kissed her. Patient A's description of the alleged kisses changed throughout her testimony. She initially testified that the first kiss was on her cheek and the second kiss was on her neck; then on cross-examination, she said she was unsure whether the first kiss was on the cheek and the second was on the neck or vice versa.

However, she reiterated that there had been two kisses, one on the cheek and one on the neck. Her evidence also differed from what she told her former primary care physician in an email written four days after the appointment, in which she mentioned only one hug and kiss after the echocardiogram; and from what she told College investigators in October 2017, where she referred to two kisses on the cheek and none on the neck. When she was challenged with these inconsistencies on cross-examination, she was adamant that there were two kisses but acknowledged that she had not always had the specific recollection she had at the hearing that one kiss was on the cheek and one on the neck and that her recollection had changed. Given these inconsistencies, the Committee did not find her evidence about the alleged kisses to be reliable. The Committee does not dismiss the possibility that Dr. Islam may have kissed Patient A despite his statements to the contrary. However, the inconsistencies in Patient A's testimony as to the location and manner of the kiss(es) rendered the Committee unable to conclude on the balance of probabilities that the kiss(es) took place.

(ii) The alleged touching of the breasts and comments about the breasts

According to Patient A's testimony, in response to her comment that she was not happy with the appearance of her breasts, Dr. Islam grabbed her breasts, one in each hand, squeezed them, and said, "They don't look too bad". She denied that the touching could have been accidental or that she misperceived what he was doing. Dr. Islam agreed that Patient A made negative comments about the appearance of her breasts, and he made a comment about them ("They seem okay"). He acknowledged having closed her gown in the middle because more of her breasts were exposed than needed to be, but he denied that he touched her breasts, even accidentally.

The Committee concluded that although Patient A was sincere in her testimony, her evidence on this issue was improbable and she most likely was mistaken. The Committee finds Dr. Islam's testimony that he pushed Patient A's gown together to make sense. Although Dr. Islam claimed that at no time did he touch Patient A's breasts

directly or accidentally, the Committee concluded that he may well have brushed his hand against her breasts, albeit not deliberately, and that Patient A misperceived that. In any event, the Committee was not persuaded on the balance of probabilities that the breast touching occurred as Patient A described it, and it therefore finds that the allegation of sexual abuse on the basis that Dr. Islam engaged in touching of a sexual nature of Patient A's breast or breasts is not proven.

The Committee also finds that Dr. Islam's explanation for the comment made about Patient A's breasts is credible. The Committee accepts that his comment, "They seem okay" was intended to be reassuring and does not rise to the level of sexual misconduct. However, the panel believes that in the context of performing an echocardiogram, the comment was not clinically warranted and therefore was disgraceful, dishonourable and unprofessional.

(iii) Touching Patient A's Jogging Pants

The Committee finds there was no clinical indication for Dr. Islam to touch Patient A's jogging pants, even if to hide her underwear. Dr. Islam did not request or have permission to touch Patient A's jogging pants, as the purpose of the appointment was solely to obtain an echocardiogram. The Committee finds that Dr. Islam's conduct in this regard was unprofessional.

(iv) The "Granny Panties" Comment

Dr. Islam acknowledged that his comment about Patient A's "granny panties" was inappropriate, and he apologized for that at the hearing. The Committee finds that this comment was inappropriate, irrelevant to the appointment, and potentially embarrassing to the patient. It constitutes disgraceful, dishonourable and unprofessional conduct.

(v) The Discussion about Patient A's Sex Life

Regardless of whether Patient A or Dr. Islam initiated discussion of Patient A's sex life and other sexual content, Dr. Islam engaged with Patient A in that conversation. His doing so with a patient was outside of the scope of his expertise and the purpose of the appointment, and was unprofessional. He allowed the conversation to go on for much too long before telling her it was better for her to discuss these issues with her family doctor, not with him. Considering the test set out in *R. v. Chase*, the Committee did not find his comments to constitute sexual abuse. Although the discussion was of sexually related topics, it was not of a sexualized character or nature.

(vi) The second September 2017 Letter

The purpose of Dr. Islam's second September letter to Patient A's family physician outlining the details of the September 2017 echocardiogram appointment ought to have been to provide information to the primary care provider on the findings of the echocardiogram, and to relay management plans and anticipated follow-up. Instead, the letter was a narrative of Dr. Islam's version of his communication with Patient A and the chain of events. Matters such as how Dr. Islam performs echocardiograms, and whether he invited Patient A's husband into the room, had nothing to do with Patient A's health care and were therefore irrelevant to what would have been of concern to the family doctor, namely his patient's health. The letter was inappropriate and self-serving. For example, there was no reason for Dr. Islam to tell the family doctor that he responded to Patient A's questions about her failed breast surgeries "in a professional positive manner", other than to justify his own conduct. Dr. Islam also over-stated the level of Patient A's anxiety, and used that overstatement in an attempt to justify his actions.

For these reasons, the Committee finds that Dr. Islam's conduct in sending the second September 2017 letter to Patient A's family physician was disgraceful, dishonourable and unprofessional.

CONCLUSION

For the above reasons, the Committee finds that the allegation that Dr. Islam engaged in sexual abuse of a patient is not proven.

The Committee finds that the allegation that Dr. Islam engaged in an act of professional misconduct, 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, is proven.

The Committee requests that the Hearings Office schedule a penalty hearing pertaining to the finding made at the earliest opportunity.

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Islam, 2020 ONCPSD 33

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

IN THE MATTER OF a Hearing directed by
the Inquiries, Complaints and Reports Committee of the
College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) of the **Health Professions Procedural Code** which is Schedule 2 of the
Regulated Health Professions Act, 1991, S.O. 1991, c. 18, as amended

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. MD ASHIQUL ISLAM

PANEL MEMBERS:

**DR. C. CLAPPERTON
MR. P. PIELSTICKER
DR. K. HALLETT
MR. J. LANGS
DR. J. RAPIN**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

**MS MORGANA KELLYTHORNE
MS PENNY NG**

COUNSEL FOR DR. ISLAM:

**MR. STEPHEN DARROCH
MR. HAKIM KASSAM**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. DAVID C. ROSENBAUM

Hearing Date and Decision Date: May 27, 2020
Release of Reasons Date: July 17, 2020

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario (“the College”) heard the liability portion of this matter in Toronto on September 16, 17, and 19, 2019. In its decision released on February 4, 2020, the Committee found that Dr. Islam engaged in an act of professional misconduct, 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.

On May 27, 2020, the Committee conducted a penalty hearing via Skype. The parties submitted an Agreed Statement of Facts on Penalty and made a joint submission as to penalty. After considering the Agreed Statement of Facts on Penalty and hearing the submissions of counsel, the Committee issued its Order with regard to penalty. The following are the Committee’s reasons for making the penalty Order.

PENALTY AND REASONS FOR PENALTY

The following facts were set out in an Agreed Statement of Facts on Penalty which was filed as an exhibit and presented to the Committee:

1. Dr. Islam has no prior history with the Discipline Committee of the College.
2. Between November 2017 and January 2018, before this matter was referred to the Discipline Committee, Dr. Islam attended one-on-one communications coaching with Dawn Martin. Ms. Martin’s report dated February 7, 2018 is attached at Tab 1 [to the Agreed Statement of Facts on Penalty].
3. Dr. Islam also completed the *Understanding Boundaries and Managing the Risks Inherent in Doctor-Patient Relationships* program at the Schulich School of

Medicine & Dentistry at Western University in London, Ontario in February 2018. Dr. Islam's certificate from this course is attached at Tab 2 [to the Agreed Statement of Facts on Penalty].

4. On September 17, 2018, Dr. Islam executed an Undertaking imposing terms, conditions and limitations on his Certificate of Registration, including practice restrictions, practice monitoring, and requirements to post a sign describing these restrictions in his out-of-hospital practice locations. Dr. Islam remained fully compliant with the terms, conditions and limitations on his Certificate of Registration. A copy of Dr. Islam's Undertaking is attached at Tab 3 [to the Agreed Statement of Facts on Penalty]. Dr. Islam was released from his Undertaking on March 26, 2020.

JOINT SUBMISSION ON PENALTY

The parties made a joint submission with respect to penalty. The Committee understands that under the test referenced by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, it should not depart from a joint submission on penalty unless the proposed penalty would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

PENALTY PRINCIPLES

In determining whether to accept the jointly-proposed penalty as appropriate, the Committee was guided by the well-recognized penalty principles. These principles are:

- Protection of the public;
- Denunciation of the misconduct;
- Specific and general deterrence;

- Maintenance of the integrity of the medical profession;
- Maintenance of the public's confidence in the College's ability to regulate the profession in the public interest;
- Proportionality; and
- Where applicable or appropriate, rehabilitation.

Aggravating Factors

There are several aggravating factors that support the terms set out in the joint submission on penalty. Patient A was a vulnerable person with an acknowledged anxiety disorder and depression. Her description of the events during and after her interaction with Dr. Islam indicates that she sustained psychological harm. She described feelings of confusion, embarrassment and most significantly a clear sense that Dr. Islam's comments and actions were inappropriate and a violation of her trust. She was sufficiently upset that within a few days of her appointment with Dr. Islam, she called her previous family doctor to tell him what had happened, and she made an appointment to see her then-current family doctor. When questioned by College counsel about why she booked that appointment, she responded "Because I was up in arms. I didn't know what to do."

Both the content and timing of Dr. Islam's letter to Patient A's family doctor were additional aggravating factors. The letter was inappropriate and self-serving. Dr. Islam overstated Patient A's anxiety in order to justify his own actions. He sent it after he had learned of Patient A's complaint. As the Committee found, both the substance and timing of the letter were vastly different from Dr. Islam's usual practice, indicating that his motive was self-preservation. This papering of his chart with self-serving content that he hoped would get him out of trouble was very concerning to the Committee.

Mitigating Factors

The Committee also considered mitigating factors. Dr. Islam has no prior discipline history. After the referral to discipline, he signed an undertaking in lieu of an order being made against him under section 25.4 of the Code, and he fully complied with the undertaking.

After Patient A's complaint was filed, but before the allegations against him were referred to discipline, Dr. Islam voluntarily participated in the "Understanding Boundaries" program, and in one-on-one communications coaching, that were designed to teach him how to prevent this sort of behaviour from recurring. Ms. Martin's report on her individual educational program with Dr. Islam indicated that he was "reflective, engaged in the process and open to feedback". This demonstrates that he may have some insight into his behaviour and some potential for rehabilitation.

Prior Cases

The parties filed a Joint Book of Authorities that included six previous cases before the Committee that involved disgraceful, dishonourable or unprofessional conduct by a physician. The Committee is not bound by its prior decisions. Each case must be decided on its facts. The Committee recognizes, however, that prior cases involving conduct of a similar nature may serve as a guide to the appropriate range of penalties.

In *CPSO v Szozda*, 2019, the Committee found that the defendant, a family doctor, provided an inadequate explanation prior to performing an examination of a patient, made inappropriate comments to the patient including during a pelvic examination, gave a brief hug to the patient after the examination, and failed to afford sufficient privacy to the patient when she was dressing. He was given a reprimand, his certificate of registration was ordered suspended for two months, he was required to successfully

complete the PROBE course in ethics and boundaries, and he was required to pay costs. Unlike in this case, Dr. Szozda did not write a self-serving letter after the fact. Also, it was a mitigating factor that Dr. Szozda entered a plea of no contest and agreed to a Statement of Uncontested Facts, thus saving the College the time and expense of a hearing and most importantly sparing the complainant the further emotional cost of having to testify before the Committee.

In *CPSO v Malette*, 2020, the physician was given a reprimand and a three-month suspension of his certificate of registration. He was required to successfully complete the PROBE course, and to pay costs. The Committee also ordered as a term, condition and limitation on his certificate that he conduct pelvic, genital and/or rectal examinations only in the presence and under the observation of a practice monitor. The physician was found to have hugged a patient at the end of each appointment, he tried to kiss her, he failed to explain the purpose of a genital examination, and he made inappropriate comments. Again, in distinction to this case, it was not a feature of Dr. Malette's misconduct that he wrote a self-serving letter after the fact. It was also a mitigating feature of the case that Dr. Malette admitted his misconduct.

CPSO v. Fikry, 2019, involved a physician who lifted his patient's shirt and commented on her brassiere, causing the patient distress. The Committee ordered that he be reprimanded, that his certificate of registration be suspended for two months, and that he pay costs. Dr. Fikry's misconduct was limited to a single comment made at the end of the clinical appointment. By contrast, Dr. Islam's misconduct involved a number of inappropriate comments, inappropriate touching, and writing a letter to the complainant's family physician that the Committee deemed to be inappropriate and inaccurate. It was also a mitigating factor in Dr. Fikry's case that he pleaded no contest, thus saving the patient the emotional strain of having to testify at a hearing.

In *CPSO v. McInnis*, 2011, the misconduct was more broad-ranging than in this case, as it involved not only boundary violations with patients but also unprofessional behaviour toward a colleague and charting issues, and the physician had been found guilty of an offence relevant to his suitability to practise. The boundary violations related to two patients and included inappropriate comments, including regarding the patients' appearance and regarding the breasts of one of the patients, hugging the patients, and making telephone calls to one of the patients after her appointment. The penalty was a reprimand, a three-month suspension and costs. It was a mitigating feature in that case that Dr. McInnis admitted his boundary violations and accepted responsibility for his misconduct.

The other two prior cases that were put before the Committee involved unprofessional conduct relating to medical records, but not boundary violations. In *CPSO v. Price* (2016), the physician was found to have added entries to a patient's chart after the patient's visits, and to have done so deliberately in order to mislead College investigations. The penalty imposed on him was a reprimand, a three-month suspension, a requirement that he obtain and use an electronic recordkeeping system acceptable to the College, and that he submit to unannounced inspections of his practice locations, and costs. A mitigating factor in that case was that the physician pleaded no contest, thus sparing the complainant and other witnesses the need to testify, and reducing the time and cost of a contested hearing. In *CPSO v. Namis* (2011), the physician was found to have added notes to the patient's chart after the original date of entry without dating or signing the changes. He also removed his notes regarding two patient visits and substituted alternate notes. He was reprimanded, was required to successfully complete educational programs in medical ethics and medical record-keeping, and was ordered to pay costs. A mitigating factor was that he admitted to the allegations, thus taking responsibility for his unprofessional actions and poor judgment.

Given that Dr. Islam's misconduct involved both boundary violations as in the first four cases referred to, and the sending of an inappropriate and self-serving letter that was similar to the misconduct in the fifth and sixth cases, and having regard to the mitigating factors in those cases, the Committee was satisfied that the proposed penalty in this case was in line with the penalties imposed for similar conduct in prior cases.

CONCLUSION

The Committee was satisfied that the proposed penalty was in the public interest, was consistent with the applicable penalty principles, and was proportionate to Dr. Islam's misconduct.

The reprimand and the four-month suspension of Dr. Islam's certificate of registration are serious penalties that serve to denounce Dr. Islam's misconduct. They will maintain the integrity of the profession and the public's confidence in the College's ability to regulate the profession in the public interest by demonstrating that the College continues to hold physicians to a very high standard when it comes to interpersonal communication. They also serve both as a specific deterrent to Dr. Islam against engaging in such misconduct in future, and as a general deterrent to the profession. They bring the critical insight to all physicians as they continue to treat and counsel patients, whether or not the patients are in positions of distress and vulnerability, that boundary violations, including remarks such as those in this case, are always inappropriate, as are attempts to justify one's conduct through self-serving and inappropriate communications, and that such misconduct will be dealt with severely.

Finally, the requirement that Dr. Islam successfully complete the PROBE course in medical ethics will serve to protect the public. Dr. Islam has provided evidence that he has learned from his errors and intends not to repeat any unprofessional conduct with

patients. He has shown good faith in the time that has passed following his interaction with Patient A. The Committee is therefore hopeful that the successful completion of the PROBE course will assist with his rehabilitation.

The Committee was satisfied that this was an appropriate case in which to order that Dr. Islam pay a portion of the costs of conducting the hearing.

ORDER

The Committee therefore ordered on May 27, 2020:

1. **THE DISCIPLINE COMMITTEE ORDERS** Dr. Islam to attend before the panel to be reprimanded.
2. **THE DISCIPLINE COMMITTEE DIRECTS** the Registrar to suspend Dr. Islam's certificate of registration for a period of four (4) months, commencing from May 28, 2020 at 12:01 a.m.
3. **THE DISCIPLINE COMMITTEE DIRECTS** the Registrar to place the following terms, conditions and limitations on Dr. Islam's certificate of registration effective immediately:
 - (i) Until the end of the suspension of Dr. Islam's certificate of registration as set forth in paragraph 2, Dr. Islam shall comply with the College Policy ["Closing a Medical Practice"](#):
 - (ii) Dr. Islam shall participate in the PROBE Ethics & Boundaries Program offered by the Centre for Personalized Education for Professionals, by receiving a passing evaluation or grade, without any condition or qualification. Dr. Islam shall complete the PROBE program within seven (7) months of the date of this Order, and will provide proof to the College of his

completion, including proof of registration and attendance and participant assessment reports, within one (1) month of completing it.

4. **THE DISCIPLINE COMMITTEE ORDERS** Dr. Islam to pay costs to the College in the amount of \$31,110.00 within sixty (60) days of the date of this Order.

**TEXT of PUBLIC REPRIMAND
Delivered March 11, 2021
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. MD ASHIQUIL ISLAM**

This is not an official transcript

Dr. Islam:

The Discipline Committee wishes to express its abhorrence for your actions with your patient. She was vulnerable and you violated her trust by hugging her twice. It was your responsibility to maintain professional boundaries. You did not do that, and your failure reflects very poorly on you, and in addition, taints the whole profession.

Several other actions on your part were egregious:

- You commented on your patient's breasts;
- You touched and moved her jogging shorts;
- You commented inappropriately on her underwear; and,
- You discussed your patient's sex life inappropriately.

All of these actions were disgraceful, dishonourable and unprofessional. You should have known better than to behave so inappropriately with a patient.

The Committee also expresses its dismay that your letter to the Family Doctor was inappropriate and self-serving. You apparently hoped to cover up your inappropriate behaviour by colouring the scenario. Instead, it revealed your manipulateness. That is of concern and is condemned by this Committee on behalf of the membership of the College.

To your credit, you have completed education in communication and boundary issues and by all accounts your progress has been positive. The Committee expects that your education and your experience with the Discipline Committee will prevent any further misconduct.