

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Bruce Gordon Minnes, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name and any information that could disclose the identity of the complainant on the motion and in the hearing under subsection 45(3) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also made an order to prohibit the publication of the name or identity of the complainant 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.

Indexed as: Minnes, B. G. (Re)

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. BRUCE GORDON MINNES

PANEL MEMBERS:

DR. S. BODLEY (CHAIR)
D. DOHERTY
DR. R. SHEPPARD
DR. E. ATTIA (Ph.D.)
DR. D. KRAFTCHECK

Hearing Dates:	January 15 to 17; May 12 to 15, 2014
Decision Date:	September 29, 2014
Release of Written Reasons:	September 29, 2014

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on January 15 to 17, and May 12 to 15, 2014. At the conclusion of the hearing, the Committee reserved its decision on finding.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Minnes committed an act of professional misconduct:

1. under clause 51(1)(b.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, in that he has engaged in the sexual abuse of patients; 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 conduct or an act or acts 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 ALLEGATIONS

As indicated in the Notice of Hearing and the attached Schedule A, there are two separate sets of allegations against Dr. Minnes. First, the College alleges that he committed professional misconduct in that his conduct towards staff at Hospital 1, between 2003 and 2009, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (“the hospital allegations”). Dr. Minnes and the College put forward an Agreed Statement of Facts with respect to the hospital allegations and Dr. Minnes admitted that the facts agreed to with respect to the hospital allegations support a finding of disgraceful, dishonourable or unprofessional conduct against him.

Second, the College alleges that Dr. Minnes committed professional misconduct in that his conduct with Ms A in July 2007, constituted sexual abuse of a patient. Alternatively,

the College submits that even if there was no doctor patient relationship, sexual contact occurred between Dr. Minnes and Ms A and that the conduct of Dr. Minnes would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (“the camp allegations”). Dr. Minnes denies these allegations.

The Committee heard the hospital allegations and the camp allegations together but the Committee understands that it must consider the two sets of allegations entirely separately. In particular, the evidence with respect to one set of allegations is not admissible with respect to the other allegations, and the admissions made with respect to the hospital allegations can have no role in the Committee’s assessment of the camp allegations. The Committee has observed this requirement in the hearing and consideration of these two sets of allegations.

THE HOSPITAL ALLEGATIONS

The Facts

The following Agreed Statement of Facts, with respect to the hospital allegations, was filed as an exhibit and presented to the Committee:

1. Dr. Minnes commenced employment as an emergency department physician at the Hospital 1 in 2000.
2. While employed at Hospital 1, Dr. Minnes behaved in an inappropriate and unprofessional manner with some members of staff in his department as described below.
3. Ms B began working as a staff nurse in the Emergency Department at Hospital 1 in 2008. Dr. Minnes engaged in inappropriate and unprofessional behaviour with respect to Ms B, as follows:
 - On occasions in 2008, Dr. Minnes would, without explanation, put his arm on her shoulder.
 - In early 2009, while she was on the telephone giving a report on a patient, Dr. Minnes placed his hands on her head and leaned in to kiss the top of her head.

When she turned around, she saw Dr. Minnes walking away. Ms B states that she was shocked and speechless, since this was not something that she expected in a professional work environment.

- Dr. Minnes came up behind her on an occasion the following month and massaged her neck and back. She states that she felt paralyzed with fear and embarrassment, and could not speak. She states that she was upset with herself for not being able to react. Other nurses were in the vicinity. Ms B pulled away as he put his two hands on top of her head and kissed it.
- In another incident in early 2009, while Ms B was sitting down charting at the nursing station, Dr. Minnes put his hand on her shoulder. Ms B got up from her chair and walked away.
- Ms B states that as a result of Dr. Minnes' behaviour, she felt uncomfortable having to walk past him and would take the long way around to the nursing station in order to avoid him.
- Ms B witnessed Dr. Minnes giving another nurse, Ms C, a back massage while this nurse's head was on the desk.

4. According to Ms B, she spoke to her manager about these incidents and to Ms D, an RN at Hospital 1 who was the Clinical Manager of the Emergency Department. Ms B told Ms D that she was upset and was feeling uncomfortable and vulnerable going to work.

5. Dr. Minnes had also behaved in an inappropriate and unprofessional manner with Ms D. When he first came to Hospital 1 in the early 2000's, Dr. Minnes approached Ms D with a smile, wrapped his arms around her tightly and lifted her off the ground. They were chest to chest as they were facing each other. There were other nurses around. Ms D pushed Dr. Minnes away and Ms D told him that this was not acceptable. Ms D states that this interaction with Dr. Minnes made her uncomfortable. They worked fairly closely in their respective roles as managers. His behaviour did improve over time.

6. Mr. E was, in 2009, the Director of Clinical Services in the Emergency Department at Hospital 1. Ms D reported directly to him.
7. Mr. E recalls that Ms D advised him of Ms B's complaint about Dr. Minnes being too close to her and her not feeling comfortable being in the same room as him. Mr. E subsequently spoke to Ms B.
8. Dr. Minnes came to Mr. E's office sometime after and assured him that he is just a friendly person and he had no intent to offend the nurse. Dr. Minnes said he had been like this for 40 years and it was hard for him to change but he would try.
9. Ms C was an RN at Hospital 1. She worked at Hospital 1 since 2008. One evening while Ms C was working at Hospital 1 in the Emergency Department, Dr. Minnes came up behind her and started massaging her shoulders. She did not say anything to Dr. Minnes but she states she felt awkward and uncomfortable at the time. He also pointed to or gently touched her collar area to make her look down and then he flicked his fingers up to touch her chin. Ms C said she found this touching very annoying and uncomfortable. She also witnessed Dr. Minnes do this to a new nurse in the department in the fall of 2011.
10. On one occasion, when Ms C was in Triage, Dr. Minnes came by, took her hand and kissed it. Ms C told Dr. Minnes that this was inappropriate. She also told him not to touch her again in any way.
11. Dr. Minnes called her the next day to apologize for kissing her hand. Ms C told him not to touch her again. After that, Dr. Minnes stopped touching her and doing the finger flicking trick.
12. However, Ms C continued to witness Dr. Minnes touching other staff on the back, shoulders and doing his "finger flicking" routine.
13. Ms C states that Dr. Minnes' behaviour interfered with her work because it made her feel uncomfortable and awkward. It happened infrequently. She did not think it was inappropriate enough to make a formal complaint. She called him on it. He stopped

bothering her. Other than Dr. Minnes, she did not have any boundary issues with other physicians in the Emergency Department.

14. Ms F was an RN at Hospital 1's Emergency Department beginning in approximately 2003. Ms F witnessed Dr. Minnes giving back rubs to female staff. This diminished over time. In the past, Ms F saw Dr. Minnes play the finger flicking game with female staff.

15. In March, 2009, Dr. G, Chief of the Department of Paediatrics at Hospital 1, together with other staff (Dr. H, Dr. I and Ms J from Human Resources), met with Dr. Minnes to discuss Ms B's complaint, although at the time Ms B's identity was still anonymous. Dr. Minnes said he felt bad for the nurse who complained and although he could not recall the incidents she described, he did not doubt what she said. When Dr. Minnes learned of Ms B's identity as a result of the College investigation, he apologized to her and she told him she accepted his apology. At the March, 2009 meeting, in the context of discussing personal boundary issues, Dr. Minnes said that he recognized that at times he had difficulty exercising appropriate self-control. He indicated that at times colleagues had told him they were uncomfortable with his behaviour so he stopped.

16. At that meeting, Dr. Minnes confirmed that he had previously been spoken to in October, 2003, by Dr. H, at the time Acting Chair of the Department of Pediatrics, and Dr. I, then the Division Head in the Emergency Department and Mr. E, Children's Health Services Manager, about complaints received about his inappropriate behaviour, including touching nurses in a manner that could be considered inappropriate. Dr. Minnes had been asked at that 2003 meeting to refrain from such action.

17. Dr. G directed Dr. Minnes to undertake certain steps, including meeting with an Ontario Medical Association physician counsellor to explore the circumstances in which the incidents occur and the stresses within his position in the Emergency Department. Dr. Minnes completed the required steps. One of the steps was to meet with an Ontario Medical Association counsellor. When Dr. Minnes did so, he was referred to Dr. K. Dr. Minnes elected to continue working with a physicians' group run by Dr. K.

Dr. Minnes, through his counsel, admitted at the hearing that the facts agreed to with the respect to the hospital allegations support a finding disgraceful, dishonourable, or unprofessional conduct against Dr. Minnes.

Finding on the Hospital Allegations

The Committee accepts the evidence contained in the Agreed Statement of Facts. As is evident from the Agreed Statement of Facts, Dr. Minnes failed to observe appropriate boundaries in the hospital setting with respect to numerous workplace colleagues over an extended period of time. In the circumstances, the Committee finds that the allegation of disgraceful, dishonourable, or unprofessional conduct, with respect to the hospital allegations, has been proven.

THE CAMP ALLEGATIONS

Overview of the Issues

The camp allegations pertain to Dr. Minnes' alleged actions in relation to Ms A, a 17-year-old counsellor at Camp 2, where Dr. Minnes was volunteering as the camp physician, in the summer of 2007. It is alleged that Ms A was Dr. Minnes' patient, and that he engaged in the sexual abuse of his patient; and, that his conduct with respect to Ms A would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

These allegations raise two issues for the Committee to determine.

Firstly, the Committee was required to determine whether a doctor-patient relationship existed between Dr. Minnes and Ms A at the material time, so that if it were proven that he engaged in sexual misconduct with Ms A, this would have constituted sexual abuse of a patient.

Secondly, whether or not Ms A was found to be Dr. Minnes' patient, the Committee was required to determine whether the allegations of sexual misconduct by Dr. Minnes in relation to Ms A had been proven.

For the reasons that follow, the Committee finds that there was no doctor-patient relationship between Dr. Minnes and Ms A. She was not his patient and, accordingly, he did not engage in the sexual abuse of a patient. The Committee finds, however, that the allegations of sexual misconduct by Dr. Minnes in relation to Ms A have been proven. The Committee finds that Dr. Minnes' conduct in this regard would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

THE EVIDENCE

A. Witnesses and Exhibits

The Committee heard the testimony of the complainant Ms A, and of her friend Mr. L, both called by the College. The evidence called by counsel for Dr. Minnes consisted of the testimonies of Dr. Minnes, his daughter Ms M, and his professional colleague and acquaintance Dr. N.

A number of exhibits were entered into evidence. These included documentation pertaining to Ms A's employment at Camp 2, a schedule of the camp activities for June to July 2007, a map of the camp, diagrams of the infirmary and staff quarters at the camp, copies of correspondence from the College investigator to Ms A, copies of letters written by Ms A to Mr. L, copies of letters written by Ms M to Dr. Minnes, copies of medical records pertaining to Dr. Minnes' knee injury in 2007, and a copy of Dr. Minnes' clinical notes from the camp infirmary.

B. The Evidence

Ms A

Ms A is now in her twenties. She lives in Town 3. She is currently self-employed. In the summer of 2007, then 17 years of age, she was employed as a counsellor at Camp 2,

which is a summer camp in Town 4. It was there that her involvement with Dr. Minnes occurred; he was the camp physician for a portion of her stay there.

Ms A testified that her first personal contact with Dr. Minnes occurred when she approached him to ask about a foot injury she had suffered. She had earlier been introduced to him, in a group setting, at a campfire shortly following his arrival. Ms A had approached Dr. Minnes informally with respect to her foot injury. She stated that she had stepped on a sharp stick while teaching kayaking, and that her foot was painful. She said that Dr. Minnes had told her to drop by the infirmary so that he could examine her foot. Ms A stated this was the usual practice at the camp; counsellors were free to approach the physician regarding medical issues with respect to themselves or the campers they were supervising. Ms A was aware that the infirmary was adjacent to, and in the same building as, the doctor's living quarters.

Ms A stated that, over the next couple of days, her foot was feeling better. She said that she encountered Dr. Minnes on a couple of subsequent occasions, during the course of routine camp activities, and that he asked her about her foot. On one occasion, she stated, he had a brief look at the foot on the steps outside the camp dining hall. She stated that he knelt down or crouched briefly to do so. He suggested again that she should come to see him; she recalled him saying that the foot could become infected.

Ms A testified that she did not attend the infirmary to have her foot examined, as Dr. Minnes had suggested. This was primarily because she thought that it was getting better, and that it did not require medical attention. She acknowledged that she had told Dr. Minnes she would attend, but stated that she was just trying to be polite, and she did not really think that she needed to go. Ms A also expressed some vague misgivings about Dr. Minnes, based on her casual contact with him. He had made her feel mildly uncomfortable in the manner in which he had interacted with her.

Ms A testified that, on what proved to be Dr. Minnes' last full day at the camp which the evidence discloses was a date in July 2007, she had the afternoon off. She had taken the

opportunity to go into Town 4 with her mother, for shopping and dinner. When she returned to camp in the early evening, there were not many people around. She assumed that activities were occurring elsewhere on the grounds. She stated that she happened to encounter Dr. Minnes as she was walking in the vicinity of her cabin. She said that, after some casual conversation which may have included the issue of her injured foot, he invited her to come to his cabin that evening. She stated that she agreed that she would. Dr. Minnes had said that he would look at her foot to make sure it was okay. He also told her that she could have a drink with him to which she reminded him that she was underage. He told her he meant juice. She decided that she would go.

Ms A's testimony contained reference to her motivation for attending Dr. Minnes' cabin on the evening in question. She stated that, having previously told Dr. Minnes that she would come and have her foot examined then not done so, she felt a sense of obligation to finally keep her word. She was also conscious of the fact that she had some free time, with nothing else planned that evening. Moreover, she appeared to acknowledge feeling flattered in a sense by Dr. Minnes' invitation. She thought it might be good to get to know someone in a senior position at the camp. She continued to feel some misgivings, based on her earlier brief interactions with Dr. Minnes which had made her uncomfortable, but disregarded these in her decision to go to his cabin, as she had told him she would.

Ms A stated that she proceeded to the infirmary around 8:30 that evening. She said that, upon arriving, she was immediately uncomfortable because Dr. Minnes was not in the infirmary, but in the adjacent living quarters next door. She felt misgivings about entering the doctor's living quarters. She stated that there was music playing in the background, which she described as having seductive tones. It seemed much more like a social encounter than a medical appointment. Despite what she states were her misgivings, she entered Dr. Minnes' living quarters and sat down.

Ms A then described progressively intrusive advances towards her by Dr. Minnes which, she claimed, eventually led to overt sexual activity. He offered her juice which she

accepted. He asked her increasingly personal questions, eventually enquiring about her sexual activities with her boyfriend. He got up and closed the blind on the main front window of the cabin. He invited her to sit on the couch beside him, which she did. He put his arm around her shoulder, and tried to pull her close to him. He put his two hands on her shoulders and turned her towards him. He took her hand and placed it on his genitals, over his pants. He suggested that they move to one of the bedrooms at the back of the cabin.

Eventually Ms A did accompany Dr. Minnes to the spare bedroom in the back and, later, to the master bedroom. According to Ms A, Dr. Minnes removed his shirt. He removed Ms A's shirt, fondled her breasts, and rubbed himself against her buttocks as she was lying face down on the bed. At some point, he removed her jeans or her shorts. He made her touch his exposed erect penis. She stated that Dr. Minnes tried to pull down her underwear but she slapped his hand away. She recalls him saying "Don't worry, I've had a vasectomy" or words to that effect.

Ms A testified regarding Dr. Minnes' demeanour as these events were unfolding. She stated that his hands were sweaty and his skin was getting red. His breathing became laboured. At one point, he had trouble talking because he was breathing so heavily. She recalls that his heart was beating loudly, and was audible to her. She described him as having been aroused.

Ms A stated that, while she was in the spare bedroom with Dr. Minnes, there was a knock at one of the doors of the cabin. Dr. Minnes regained his composure, put on his shirt, and went to the door where he spoke for a few minutes with an individual whom Ms A identified as the assistant director of the camp. While he was doing so, Ms A put her shirt back on and knelt beside the bed, trying to avoid being seen. Dr. Minnes returned a few minutes later, told her to accompany him to the master bedroom which she did, and continued again with the sexual activity described above.

Ms A testified that, as these events were proceeding, she was in emotional turmoil. She stated that she was frightened and felt trapped, but that she was afraid to disobey Dr. Minnes. She was berating herself at having gotten into this situation, despite her misgivings referred to earlier. She was trying to decide how to extricate herself from it. She acknowledged that she had opportunities to simply leave the cabin, but stated that she was afraid if she did so she would be seen exiting Dr. Minnes' quarters, and that her reputation would be damaged. She stated that she felt that she had to go along with what Dr. Minnes wanted, and thought that this was the best way to get through it; he had not been aggressive or forceful with her. When Dr. Minnes attempted to remove her underwear, however, she stated that she became angry and resisted in a more assertive fashion. She stated that she told him that she had to leave, as it was late and she had responsibilities to her campers. She left the cabin shortly thereafter.

Ms A stated that she encountered Dr. Minnes on two subsequent occasions. The following morning, the morning of Dr. Minnes' last day at the camp, she saw him at breakfast in the dining hall. She states that he approached her and asked if she was okay. Later in the summer, she saw Dr. Minnes again, at a mall in City 5, when she was assisting with dropping off some campers and Dr. Minnes was there to pick up one of his daughters. At that time, also, Dr. Minnes approached her and asked if she was okay.

Ms A testified that, roughly three or four days subsequent to the incident with Dr. Minnes, she telephoned her friend Mr. L while still at the camp. She informed him what had occurred. She stated that Mr. L told her that this was a serious matter, and that she should tell someone in authority. He advised her to write down the details, everything that she could remember, and to send him the written account. Ms A stated that she did so, and that she mailed her written description of the incident in a letter to Mr. L. Subsequently, she retrieved this letter from him. She apparently retained it in her possession for a period of time but, when she was eventually asked for it by the College investigator, she was unable to locate it. She thinks that it might have been inadvertently thrown out, or accidentally shredded by her mother, who apparently would sometimes clean out Ms A's room and dispose of some of the clutter. Ms A acknowledged that she

did not initially respond to the request by the College investigator to produce the letter. She stated that she did not fully comprehend the College's investigatory process, she did not consider locating the letter to be a high priority, and she avoided dealing with the issue because she did not want to think about what had happened.

Ms A stated that, sometime over one year later, she disclosed to her mother what had occurred between her and Dr. Minnes. She did so because she was having intrusive thoughts about the incident, and was having a hard time coping with them. Her mother located a counsellor for her to see, a psychologist, Dr. O. Ms A saw Dr. O for the first time in September 2008. Dr. O subsequently reported Ms A's disclosure about Dr. Minnes to the College, leading to the College's investigation and eventually to this disciplinary proceeding.

Mr. L

Mr. L was a friend of Ms A's in the summer of 2007. He knew she was working as a camp counsellor that summer; they spoke on the phone from time to time and she had sent him letters.

Mr. L testified that Ms A had telephoned him in July 2007, and told him about an incident with Dr. Minnes. She had trouble talking about it over the telephone; according to Mr. L she was upset, confused, and overwhelmed. He told her to write down the details of what had occurred and to mail the written account to him. He eventually received this document, sometime in August 2007, he believes. He stated that the letter was handwritten, five or six pages in duration and single spaced.

Mr. L stated that he received other letters from Ms A that summer, and copies of two of these were entered as exhibits (Exhibits 14 and 15). Both of these letters refer to Ms A's detailed account of the incident with Dr. Minnes. Mr. L stated that he kept Ms A's letters, as well as her written account of the incident. At some later point, roughly one year later according to his recollection, Ms A asked him to return her description of the incident,

and he did so. He did not make a copy of this and had not shown it to anyone else. He believes that Ms A wanted this back because she was seeing a therapist at that time.

Dr. Bruce Minnes

Dr. Minnes is a 54-year-old pediatrician. He testified that he graduated from Queen's University Medical School in 1986, and trained in pediatrics at Hospital 6. He did two years subspecialty training in pediatric emergency medicine. Subsequently, he practised in London, Ontario, Saudi Arabia, and at Hospital 1 in City 5. He is an experienced clinician who also has a background in teaching and administration.

Dr. Minnes testified that, since roughly 1995, he had volunteered as the camp physician at Camp 2. He learned of this opportunity from one of his mentors at Hospital 6, and would normally volunteer there for one week each summer. This was an unpaid position and he did not bill OHIP for the services he provided. He enjoyed his time at the camp, the setting and the outdoor activities, and his daughters were able to stay at the camp as well, which was a good experience for them. In the summer of 2007, Dr. Minnes' two daughters, were both staying at the camp during the week when he was working there.

Dr. Minnes provided testimony to the Committee with respect to his duties as camp physician. These included providing clinical services to both campers and staff. Some of the children would have chronic conditions which required monitoring; at times acute issues would also require his attention, such as viral illnesses, rashes, minor injuries, etc. Dr. Minnes stated that the infirmary had regular hours each day when he would see patients, after breakfast and in the evening after dinner. Outside of regular hours, he would attend to issues as they arose, if he was available. He would often leave notes on the door of the infirmary, indicating his whereabouts during the day, so that he could be contacted if necessary. He kept a written record of the patients he saw in the infirmary, and copies of these records for a date in July 2007 were introduced as an exhibit (Exhibit 23).

Dr. Minnes gave evidence regarding the location of the infirmary and the attached living quarters within the larger environs of the camp, and the proximity of the infirmary building to the dining hall, described as a main hub of activity which was roughly 55 to 60 metres away. There was an unobstructed view of the infirmary from the dining hall. The dining hall windows faced the infirmary. The area was lit after dark, with outside lighting. Dr. Minnes also testified about the interior of the infirmary building and the adjacent staff quarters, and the location of the windows and doors in this building. A diagram of the infirmary building was entered as an exhibit (Exhibit 12).

Dr. Minnes testified that he would have regular contact with his two daughters when they were at the camp. His younger daughter, Ms M, suffered from home sickness, and both daughters would visit his cabin each evening before bed. He stated that they might come at anytime in the evening, between 8:30 and 11:00 p.m., although usually between 9:00 and 10:00 p.m. Copies of two letters written by Ms M to Dr. Minnes, in the summer of 2006, were introduced as exhibits (Exhibits 16 and 17). Dr. Minnes testified also that it would not be unusual for him to have other visitors at his cabin during evening hours, such as members of the senior staff at the camp.

Dr. Minnes testified that, in the summer of 2007, his activities were limited on account of a knee injury he had sustained in March of that year. He experienced pain and had a limited range of motion in the knee. He stated that he was hobbling around with the assistance of a cane, and that he could not crouch or kneel down. Investigations had revealed a torn meniscus which was later repaired in August 2007. Copies of various medical records relating to Dr. Minnes' knee injury were entered as exhibits (Exhibits 19 through 22).

Dr. Minnes testified about the events of the date in July 2007. This was a Friday, his last day at the camp for that year. After dinner that day, he was packing up his things, preparing to leave the next morning. He had seen a 9-year-old in the infirmary at 8:00 p.m., as confirmed by the infirmary record (Exhibit 23). He then returned to organizing his belongings in preparation for his departure.

Dr. Minnes stated that Ms A appeared at the door to his living quarters on the evening of the date in July 2007. She knocked on the door and he invited her in. He did not recall having met her prior to that evening, although later in his testimony, he acknowledged that he might have had some earlier casual contact. In any event, he invited Ms A into his quarters. Dr. Minnes stated that Ms A introduced herself although he had no specific recollection of the nature of her introduction; she told him that there were some things she wanted to talk to him about, so he asked her to sit down, which she did.

Dr. Minnes testified that Ms A wanted to ask him about his experiences working with children, as she was considering that herself at some point. Initially, Dr. Minnes perceived this as a pleasant and comfortable conversation. He asked her some questions about her background, including her experiences as a camp counsellor and her family. This led to his disclosure to her of some of his personal history, including that his daughters were at the camp, that he was no longer together with his wife, and that he was in a long term relationship with his girlfriend.

Dr. Minnes stated that Ms A asked him if he was going to have more children, to which he replied that he was not able to have children, because he had an operation. In cross examination, Dr. Minnes acknowledged that what he was referring to was the fact that he had a vasectomy although he testified that he did not use the word “vasectomy” with Ms A.

Dr. Minnes stated that at no time did he question Ms A about whether she had a boyfriend, about anything related to a relationship with a boyfriend, or about her sexual history.

Dr. Minnes testified that Ms A went to the washroom and, when she returned, he became uncomfortable with her questions. She asked him if he had ever had a relationship with anyone at the camp, a “summer fling”. She stated that, in her experience at a previous camp, these things happened. She went on to say that she wanted to “play around”. She said that she had a wild side and wanted to have some fun. Before long, according to Dr.

Minnes, Ms A was walking towards the master bedroom at the back of the camp and removing her clothes. Dr. Minnes testified that she took off her shirt and her bra and threw them on the floor, then went into the bedroom where she sat on the bed and took off her pants.

Dr. Minnes testified about his reaction to this series of events. He became uncomfortable regarding Ms A's suggestive and provocative conversation. He informed her that he had never had a relationship with anyone at the camp, and never would as this would be inappropriate. He asked Ms A to leave. When she started to take off her clothes, Dr. Minnes was horrified. He was afraid his daughters might walk in at any time. He picked up her clothes off the floor and threw them on the bed where she was sitting. Dr. Minnes testified that he told Ms A to get out, in no uncertain terms. Eventually, she came out of the bedroom fully dressed, and left.

Dr. Minnes testified that at no time was there any physical contact between him and Ms A. He did not enter the bedroom with her. He stated that he received no visitors during the course of his interaction with Ms A which, he estimated, lasted roughly 20 to 25 minutes in total.

Dr. Minnes testified that, following Ms A's departure from his cabin, he was beside himself. He was unable to think clearly and needed time to collect his thoughts. He stated that nothing like this had ever happened to him before. Subsequently, his two daughters did come by, separately, and he also received visits from the camp director Ms Q and the camp manager Ms P.

Dr. Minnes testified that he spoke to no one about this incident. The following morning, he got up as usual and prepared to leave camp. He stated that he did not encounter Ms A in the dining hall that morning, nor did he see her later in the summer at the mall in City 5. He explained his failure to inform anyone, including the camp director, about this incident with Ms A as reflecting the way in which he habitually dealt with stressful events, which was by not dealing with them at all. He discounted suggestions that, if Ms

A had behaved in the way she described, this should have alerted him to the possible presence of mental illness or emotional imbalance in the girl, which would have indicated a need to inform the camp administration. He stated that he considered this to be simply an example of bad behaviour in a teenage girl.

Dr. N

Dr. N testified by videoconference from City 7 with the consent of the parties.

Dr. N is the Chief of Staff at Hospital 6. She is an associate professor in the Department of Pediatrics at a university in Ontario. She worked as a volunteer physician at Camp 2 for 20 years, one week each summer, in the same capacity as Dr. Minnes. She had been an acquaintance of Dr. Minnes for many years, since they met at Hospital 6 during his training there, and maintained a professional and social relationship with him. Dr. N was never at the camp when Dr. Minnes was there. She had no knowledge of his activities or routines in his role as camp physician.

Dr. N testified regarding her experiences at Camp 2. She described the location of the infirmary within the camp, its relative proximity to the dining hall, and the layout of the infirmary building. She stated that there is a large picture window on the front of the cabin and, although it had blinds on it which could be closed, they did not close completely. Sometimes the interior of the cabin would remain to some extent visible from the outside, even when the blinds were closed. Dr. N stated that the infirmary was in a relatively high traffic area, particularly during the day, less so in the evening. She testified about the usual protocol regarding the provision of medical services to children and staff at the camp, in her experience. She stated that there could be unexpected visits to the infirmary or to the staff quarters, for a variety of reasons. The camp director would usually come by towards the end of the doctor's week there, and sometimes the office manager as well.

Ms M

Ms M is the younger daughter of Dr. Minnes. In the summer of 2007, she was a preteen, and had stayed at Camp 2 for the one week when Dr. Minnes was the camp physician.

Ms M testified that she did get homesick as a child, when she was away from home. This tended to be worse at night. When at the camp, she was in the habit of visiting her father often, as this would help relieve her homesickness. She made a practice of seeing him every evening before going to bed, usually between 8:30 and 10:00 p.m., and sometimes at other times as well. Ms M had no specific memories of having visited her father on the evening of the date in July 2007.

FINDINGS AND ANALYSIS

The onus is on the College to prove the allegations in the Notice of Hearing. The standard of proof is the civil standard, on a balance of probabilities. Proof must be established on the basis of evidence which is clear, cogent, and convincing. Essentially, the Committee must decide on the totality of the evidence what happened on the date in July 2007, and whether Ms A was a patient of Dr. Minnes, and whether what occurred constituted professional misconduct.

Doctor-Patient Relationship

The Committee finds based on the evidence that there was no doctor-patient relationship between Dr. Minnes and Ms A. She was not his patient on the date in July 2007.

Whether or not a doctor-patient relationship exists between the physician and the complainant is a determination to be made by the Committee in consideration of the specific facts of the case. As stated by the Ontario Superior Court of Justice in *Mussani v. CPSO (2003)*, this determination is “a factual enquiry that is subject to interpretation by the Tribunals and the Courts” (paragraph 84). The Court further observed “‘patient’ is not defined in the *RHPA (Regulated Health Professions Act)*.”

This issue has been previously considered by the Discipline Committee. The case of *CPSO v. Redhead (2013)* sets out a number of factors that can be considered by the Committee in deciding, in light of the specific facts of the case, whether or not a doctor-patient relationship existed. These factors are as follows:

- a) whether the professional had a patient file for the patient, including history, physical examination, diagnosis, plan of management, prognosis, diagnostic imaging reports, and a written record of treatments;
- b) whether there were OHIP billing records for services provided by the professional to the patient;
- c) the number and nature of treatments received by the complainant from the professional, and the location in which these treatments were received;
- d) whether any of the medical services provided involved psychotherapy;
- e) whether the complainant ever completed a consent to treatment form;
- f) whether there was any documentary evidence in which the professional referred to the complainant as his or her patient;
- g) whether there were any letters of consultation written to the complainant's primary physician;
- h) whether there were any letters reporting back to the professional about the complainant;
- i) whether the complainant was seeing other physicians, and particularly, whether the complainant had her own family physician when the sexual relationship began;
- j) whether there were referrals of the complainant by the professional to other professionals; and
- k) whether the professional prescribed medication to the complainant under his or her signature.

While many of these factors would not apply by virtue of the circumstances of this case, they nevertheless provide useful guidance to the Committee in considering the issue.

With respect to the relationship between Dr. Minnes and Ms A, the Committee accepts Ms A's evidence that she injured her foot, that she had conversed briefly with Dr. Minnes prior to the date in July 2007 about this injury, and that Dr. Minnes had crouched or bent down and looked at her foot on one occasion outside the dining hall. Some evidence was led by Dr. Minnes that he had a knee injury and could not have bent down, but Dr. Minnes' medical records confirm that he had the full range of motion with his knee. For the reasons stated in the Committee's credibility assessment below, the Committee accepts Ms A's evidence that Dr. Minnes did look at her foot outside the dining hall as she said he did and that Dr. Minnes had told her to come by the infirmary to have her foot examined, and that he had enquired about her foot when she was in his cabin on the date in July 2007.

The Committee finds, however, that these brief informal conversations about Ms A's foot do not establish that a doctor-patient relationship existed. While Dr. Minnes, as camp physician, was responsible for providing medical services to both children and staff at the camp, he did not, in fact, provide any services to Ms A. She had not followed his advice to come to the infirmary prior to the date in July 2007. Dr. Minnes had never properly examined her foot. No medical advice was given and no course of treatment was prescribed. No record was made of Dr. Minnes' brief discussions with Ms A about her foot. None of the criteria outlined above were, in fact, met.

With respect to Ms A's visit to the infirmary on the date in July 2007, the Committee finds that her attendance on that date was not motivated by concern about her injury. Ms A testified that, by that time, her foot was getting better. She had been walking around Town 4 earlier that day, shopping and dining without stated difficulty. Furthermore, when she had spoken briefly to Dr. Minnes earlier that evening, he had mentioned that she could have a drink of juice with him. Ms A knew that Dr. Minnes was suggesting a social aspect to her visit, and knowing this, she accepted his invitation.

While Ms A could have become Dr. Minnes' patient by virtue of the fact that she was a staff member, that she had been injured, and that she had informally asked for his opinion

with respect to her injury, the Committee finds that something more would have been required for an actual doctor-patient relationship to have been established. Although Ms A did visit the infirmary in the evening of the date in July 2007, and although she has stated that she thought this was partially so that Dr. Minnes could examine her foot, in fact this is not what occurred. The events on the date in July 2007 cannot in any way be construed as including the usual components of a physician-patient interaction.

The Committee finds that the facts of this case compel the conclusion that Ms A was not a patient of Dr. Minnes. Consequently, he cannot be found to have engaged in the sexual abuse of a patient.

Disgraceful, Dishonourable or Unprofessional Conduct in Relation to Ms A

For the reasons set out below, the Committee finds that there was sexual contact between Dr. Minnes and Ms A that occurred largely as Ms A said it did. While the Committee has found that there was no doctor patient relationship, Dr. Minnes was nevertheless the camp doctor and 47 years old and Ms A was a 17 year old camp counsellor, and he was in a position of authority vis a vis Ms A. The Committee finds on the evidence that Dr. Minnes' conduct with Ms A, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

The Committee was presented with starkly conflicting versions of what transpired between Dr. Minnes and Ms A on the evening of the date in July 2007. A determination of the facts will necessarily hinge, to a large extent, on the Committee's assessment of the respective credibility of Ms A and Dr. Minnes, and of the reliability of their evidence. The case law makes clear, however, that the issue is not simply a matter of the Committee accepting the evidence of one over the other. Rejection of the evidence of Dr. Minnes does not necessarily equate to acceptance of the evidence of Ms A. The issue for the Committee to determine is whether, on a balance of probabilities, the College has proved the allegation of disgraceful, dishonourable, or unprofessional conduct on

evidence that is clear, cogent, and convincing. The Committee finds that the College has done so.

This case is very much a “she said, he said” one. Ms A testified to sexual contact with Dr. Minnes initiated by Dr. Minnes. Dr. Minnes testified to Ms A essentially stripping before him shortly after meeting for what he thought was the first time, Ms A urging him to participate in sexual acts with her and Dr. Minnes rebuffing her and then telling no one about it.

Ms A’s recounting of the chain of events which culminated in her attendance at Dr. Minnes’ cabin on the evening of the date in July 2007 conveyed, to the Committee, a clear and detailed narrative which the Committee accepts. Her description of the events of that evening, while she was alone with Dr. Minnes in his cabin, was clear, detailed, and consistent. Her description of her emotional state while these events were unfolding, was believable and consistent with what she stated had taken place. Her demeanour in giving evidence before the Committee did not diminish her credibility. The Committee believes and accepts her evidence which considered in all of the circumstances was clear, cogent, and convincing.

Dr. Minnes’ version of the events in question, in contrast, is fundamentally implausible. He would have the Committee believe that a 17-year-old female camp counsellor, previously unknown to him, shy and under-assertive at the material time according to the evidence, came uninvited to the living quarters of a 47-year-old male physician. Within roughly ten to fifteen minutes of making his acquaintance, she attempted to seduce him into sexual activity in a most overt and histrionic fashion, by taking off her clothes and entering his bedroom, saying she wanted to fool around because she was horny, ignoring his repeated protestations that her behaviour was inappropriate and his demands that she leave. This account, in the view of the Committee, is simply not credible, is contrary to human nature and common sense and, in fact, verges on the preposterous.

Ms A's testimony of Dr. Minnes seeking sexual contact with her is supported by a very significant fact. Ms A knew that Dr. Minnes had had a vasectomy. Her explanation for how she knew this intimate fact about Dr. Minnes makes sense and supports her version of events. She stated that while they were having sexual contact, Dr. Minnes tried to pull down her underwear but she slapped his hand away. She recalls him saying "Don't worry, I've had a vasectomy" or words to that effect.

Dr. Minnes' explanation for how Ms A knew that he had a vasectomy made little sense and we reject it. He testified that, within roughly ten minutes of meeting Ms A for the first time, he had informed her that he was no longer with his wife, that he was in a long term relationship with his girlfriend, and that he previously had an "operation" that prevented him from having children and that he divulged this fact because the 17 year old young woman asked him if he was going to have more children. The Committee finds it is highly unlikely Ms A would have asked this question and it is equally unlikely that he would have confided such details of his personal life to a virtual stranger, particularly a 17-year-old female with whom he found himself alone in his cabin. The age difference between Ms A and himself, and the compelling aspect of his authority over her by virtue of his position as camp physician, would have ordinarily created formidable boundaries which would have precluded such disclosure.

Ms A's credibility was challenged by the defence with respect to multiple issues. Counsel for Dr. Minnes challenged the credibility of Ms A's evidence in relation to the letter which she states she wrote to her friend Mr. L, shortly following the incident with Dr. Minnes, in which she apparently described in detail what had occurred with the doctor. Counsel characterized this letter as "the Original Statement", although, in fact, it was not a "statement" in the usual sense of the term; it was a written account which she prepared at the request of her friend. It was written shortly following the events in question and therefore may have contained important information with respect to these events. Counsel challenges, in particular, Ms A's subsequent failure to provide this letter to the College investigators, despite repeated requests, and asks the Committee to infer

that she did not produce the letter in order to avoid being confronted with inconsistencies between it and her other statements pertaining to the events in question.

The Committee is not prepared to draw this inference. The Committee finds there are plausible reasons for the non-production of the letter which, in the view of the Committee, do not undermine Ms A's credibility. She was young and immature when the College's investigation commenced. She cannot be expected to have had a sophisticated understanding of the importance of this relatively contemporaneous account, in terms of the weight which it would be assigned at the subsequent proceedings. By the time the College requested the letter from Ms A, she had already given two detailed descriptions of the incident: to her therapist Dr. O in September 2008; and to the College investigator in early July 2009. It would have been reasonable for her to have believed that she had already conveyed the important information, and the importance of producing the letter would have been therefore diminished. Although counsel for Dr. Minnes suggests that she did not produce the letter because she was aware of inconsistencies it contained, the opposite inference is more likely that she did not believe the letter was of crucial importance because she knew that it contained nothing different or new.

The Committee accepts that Ms A's responses to the College request for the letter were disingenuous. She appears to have been procrastinating, trying to avoid complying with the requests until the relatively last minute, by which time the letter could not be located. It appears to the Committee that she does have a tendency to rationalize her behaviour; in essence, she was not fully cooperating with the College investigation. In the view of the Committee, however, this is immaterial. The evidence which she did provide was credible and reliable. The Committee accepts that she wrote the letter in question for the reason she has stated. The existence of the letter is confirmed by Mr. L's testimony. The contents of the letter are unknown. The Committee's findings necessarily rest on the evidence before it, and the letter is not part of the evidence. We cannot speculate on its contents, or draw unsupportable inferences from its non-production.

Counsel for Dr. Minnes suggests that Ms A's evidence is not credible because of the alleged implausibility of her story, in part, it is argued, because Dr. Minnes would have been highly unlikely to act as she alleges when his living quarters were located in a high traffic and visible area of the camp, when this area is lit at night enhancing visibility, and when visitors to his quarters, both regularly by his daughters and intermittently by others, were commonplace. Essentially, it is argued, there was a lack of reasonable opportunity for Dr. Minnes to have acted as Ms A alleges.

The Committee, however, finds that Ms A's credibility is not diminished by this argument. The evidence does establish that Dr. Minnes' living quarters were centrally located in the camp, and that there was a lot of pedestrian traffic in the area, although there was less during the evening hours. The Committee accepts that there was an unobstructed view of the building from the dining hall, roughly 50 to 60 metres away, and that the area was lit by outdoor lighting in the evening. Despite these facts, however, activities taking place inside the cabin would have been much less visible to outside observers. The quarters had a solid wooden door which could have been closed, and the picture window was covered by a blind which, the Committee accepts, was closed by Dr. Minnes. Although Dr. N stated that the blind functioned imperfectly, Dr. Minnes may not have known this. Furthermore, the overt sexual activity occurred in the bedrooms at the rear of the cabin, one of which was described as dark, with the lights off. The interior of this room would not have been visible to an observer outside the cabin.

The Committee accepts that visitors often attended Dr. Minnes' quarters. The evidence does not establish, however, that there was a high likelihood of this occurring during the specific time period when Dr. Minnes' sexual activity with Ms A was taking place. Although Dr. Minnes testified that his daughters had not yet attended that night, and thus could have arrived at any minute, the Committee finds the overall credibility of Dr. Minnes' evidence to be lacking for reasons to be stated below. Ms M, in her evidence, had no specific recollection of that evening, and could shed no light on the timing of her visit. Ms A's evidence, which is accepted by the Committee, is that in fact an unexpected visitor did arrive during the course of Dr. Minnes' sexual activity with her. Dr. Minnes

was able to quickly regain his composure, converse with the visitor at the door, and then return to his activities with Ms A without apparently arousing suspicion.

Furthermore, and significantly, although clearly Dr. Minnes was taking risks in acting as he did, risk-taking behaviour is an inherent component of the activities alleged. The Committee has concluded that Dr. Minnes was aware of the risks, but acted anyway. It cannot be assumed that his behaviour would have been governed by a reasoned risk/benefit analysis.

Counsel for Dr. Minnes also attacked Ms A's credibility on account of inconsistencies between the various statements which she has made pertaining to her allegations. Minor inconsistencies, however, are to be expected given the passage of time, the frailties of memory, and a degree of imprecision which is to be expected considering the age and relative immaturity of Ms A, her unfamiliarity with the legal process, and the context in which her different statements were made. The case law is clear that inconsequential inconsistencies do not necessarily detract from the overall credibility of a witness. The Committee finds that most of the inconsistencies attributed to Ms A are of no consequence.

The Committee notes, however, that there is a material and potentially significant inconsistency in Ms A's statements regarding her having placed her hand on Dr. Minnes' naked erect penis. This detail was not contained in Ms A's account to her therapist, Dr. O, yet it constitutes one of her most serious factual allegations against Dr. Minnes.

The Committee carefully considered this inconsistency and finds that, in all the circumstances, it does not seriously detract from Ms A's credibility. The context is important. Dr. O is a psychologist who essentially was taking a history from Ms A. She would have been, amongst other things, trying to establish a therapeutic relationship. Dr. O was not acting as a quasi-court reporter taking a verbatim statement. She was not primarily acting in an investigative capacity, although Ms A's description to her did lead to a subsequent investigation. It is reasonable to conclude that Ms A, at the time of her

initial meeting with Dr. O, might not have mentioned details which, later in the investigation, would have assumed greater importance. This could have been on account of her anxiety, her embarrassment at discussing sensitive sexual issues, or her unfamiliarity with the process. Further, Dr. O, acting primarily as a therapist, would not necessarily have pressed Ms A on the specific graphic details. The Committee finds that there were plausible reasons for this material inconsistency in Ms A's statements which do not seriously damage her credibility.

The Committee accepts that the evidence shows that Ms A, at times in the past, has shown somewhat of a tendency to shade the truth. This is seen in her communications with the College regarding the letter to Mr. L, as referred to above, and in her letter of application to Camp 2 with her accompanying curriculum vitae, which contains some inaccuracies. Ms A admitted to these in her testimony. Ms A's evidence before the Committee, furthermore, suggests that she is prone to exaggeration and embellishment. For example, her statements that, during the course of her interactions with Dr. Minnes, he was aroused to the point of having difficulty breathing, and that his heartbeat would have been audible from across the room, suggest this tendency. Her statement that the music he was playing had "seductive overtones" is somewhat dramatic.

These characteristics of Ms A were carefully considered by the Committee in assessing her credibility and the reliability of her evidence. In the view of the Committee, with respect to the central issues which pertain to Dr. Minnes' instigation of intrusive sexual activities with her, her credibility is not seriously undermined. The Committee accepts that her evidence is sufficiently reliable to support a finding against Dr. Minnes.

Dr. Minnes' description of his emotional reaction to Ms A's alleged dramatic sexual behaviour is lacking in credibility. He describes himself as having been so taken aback that he was confused, unable to think clearly, in a state of virtual panic. It seems very unlikely to the Committee that, if his account of Ms A's behaviour were to be believed, he would have been traumatized to this extent. Dr. Minnes is an experienced pediatrician. He has, in his career, been trained in and exposed to emergency situations and to trauma.

Although he attempts to make a distinction between his ability to handle stress in his personal life as opposed to in his professional capacity, this distinction is unconvincing in the circumstances of this case. In fact, the Committee questions to what extent Ms A, an adolescent whom (on his evidence) he had not previously met, could have been part of his “personal life” within ten minutes of him meeting her. Her behaviour as described by Dr. Minnes would certainly have been perceived as troubling, highly unusual, and even bizarre. For a physician with Dr. Minnes’ background and experience, however, it seriously stretches credibility for him to claim that he was panicked virtually to the point of incapacity.

Dr. Minnes’ explanation for his subsequent failure to tell anyone about Ms A’s purported behaviour, in the view of the Committee, is simply not believable. Even if it were accepted that, in the immediate aftermath of the incident, he was so traumatized that he could not think straight and properly consider his response, this would only explain the fact that he did not disclose what had happened to the camp administration later that evening, when both the director and assistant had visited him in his cabin. The evidence is, however, that he never informed the director that evening, or at all, even though he had a close and trusting relationship with her for over ten years. If Dr. Minnes’ account were true, and he was the passive and protesting witness to bizarre sexual behaviour on the part of an adolescent female camp employee, it defies reasonable belief that he would have remained silent about this incident until he found that he was being investigated by the College. Ms A’s behaviour as described by Dr. Minnes would have raised many serious concerns for a responsible physician in his situation, not least the concern that he needed to disclose what she had done in order to protect himself from future allegations of impropriety on his part. He should also have been concerned about Ms A’s mental health and her suitability to continue in her position at the camp. The only reasonable inference with respect to Dr. Minnes’ subsequent silence with respect to this incident is that he had something to hide.

SUMMARY

The Committee has found that sexual contact did occur between Dr. Minnes and Ms A, and that it occurred as Ms A said it did. The Committee finds that Ms A was not Dr. Minnes' patient and that therefore the allegation of sexual abuse of a patient is not proven. Given that Dr. Minnes was the camp doctor and Ms A was a 17 year old camp counsellor 30 years his junior, the Committee finds in the circumstances that Dr. Minnes' conduct vis a vis Ms A is conduct that would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

As a separate matter, and as indicated at the outset of these reasons, the Committee finds that the allegation of disgraceful, dishonourable, or unprofessional conduct, with respect to the hospital allegations, has also been proven.

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

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Bruce Gordon Minnes, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name and any information that could disclose the identity of the complainant on the motion and in the hearing under subsection 45(3) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also made an order to prohibit the publication of the name or identity of the complainant under subsection 47(1) of the *Code*.

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

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.
Minnes, 2015 ONCPSD 3**

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. BRUCE GORDON MINNES

PANEL MEMBERS:

DR. S. BODLEY (CHAIR)
D. DOHERTY
DR. R. SHEPPARD
DR. E. ATTIA (Ph.D.)
DR. D. KRAFTCHECK

Penalty Hearing Date: December 2, 2014
Penalty Decision Date: January 19, 2015
Release of Written Reasons: January 19, 2015

PUBLICATION BAN

PENALTY AND REASONS FOR PENALTY

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario delivered its written decision and reasons on finding in this matter on September 29, 2014, and found that Dr. Minnes has committed acts of professional misconduct, in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee heard evidence and submissions on penalty and costs on December 2, 2014, and reserved its decision.

EVIDENCE AND SUBMISSIONS ON PENALTY AND COSTS

Counsel for the College submitted that the suitable penalty and costs order was revocation of Dr. Minnes’ certificate of registration, a public reprimand, and costs in the amount of \$35,680.00. The costs are calculated for eight hearing days at the tariff rate of \$4,460.00 per day.

Counsel for Dr. Minnes submitted that revocation of his certificate of registration was not warranted, and suggested a composite penalty, in light of the two separate findings against Dr. Minnes, consisting of a suspension of his certificate of registration from six to eight months, a public reprimand, the requirement that he complete a boundaries course and that he commence therapy with Dr. R, a therapist identified as having a special interest in the treatment of high risk behaviours.

In determining an appropriate penalty order, the Committee considered the findings in its Decision and Reasons for Decision in this matter dated September 29, 2014 and the evidence filed including: the impact statements of Ms A (Exhibit 1) and Ms B (Exhibit 2); a brief of supporting materials submitted by counsel for Dr. Minnes, which includes a report from Dr. K, Psychologist, pertaining to Dr. Minnes’ progress in treatment, as well as numerous letters of support submitted on Dr. Minnes’ behalf (Exhibit 3); and, several documents about Dr. R and her Prevention Wellness Rehabilitation Program (Exhibit 4).

The Committee also reviewed the relevant case law submitted by both counsel and carefully considered the submissions made by counsel with respect to penalty.

PENALTY DECISION

For the reasons that follow, the Committee decided that, in light of all the circumstances of this case, revocation of Dr. Minnes' certificate of registration is required. The Committee also requires that Dr. Minnes appear before it to be reprimanded. The Committee makes no order with respect to costs payable to the College at this time since the parties did not make full oral submissions and directs written submissions from the parties with respect to costs be exchanged and filed within 14 days of the date of this decision.

REASONS FOR DECISION ON PENALTY

The Committee has made two separate findings of professional misconduct against Dr. Minnes, both involving conduct that has been found to be disgraceful, dishonourable, or unprofessional. The specific findings are contained in the Committee's Decision and Reasons for Decision dated September 29, 2014, and will not be repeated in full here. A brief summary is as follows.

First, Dr. Minnes' conduct towards staff at Hospital 1, between 2003 and 2009, was found to be disgraceful, dishonourable, or unprofessional. The evidence disclosed that he had engaged in repeated boundary violations with female nursing staff at Hospital 1 where Dr. Minnes was employed as a pediatrician. The behaviour in question consisted mainly of unwanted and inappropriate touching. Dr. Minnes admitted that he had behaved as alleged.

Second, Dr. Minnes was found to have engaged in overt and intrusive sexual behaviour with a 17-year-old female counsellor, Ms A, at a summer camp where Dr. Minnes was the camp physician. This occurred on one occasion in the summer of 2007. Dr. Minnes denied this allegation, and attempted to portray himself as the victim of a sexually aggressive adolescent. The Committee found the complainant's version of events more

credible than that of Dr. Minnes and accepted her evidence as true. The Committee also found that the complainant was not Dr. Minnes' patient and therefore, he had not committed sexual abuse of a patient. However, his conduct was found to be disgraceful, dishonourable, or unprofessional.

The principles relevant to the imposition of penalty in disciplinary proceedings are well-established. The protection of the public is the paramount consideration. Others include: maintenance of public confidence in the reputation and integrity of the profession and in the principle of effective self-governance; general deterrence as it applies to the membership as a whole; specific deterrence as it applies to this particular member; and, the potential for rehabilitation of the member. The weighing of these principles, in light of the specific facts and circumstances of the case, is the task to be undertaken by the Committee in arriving at its decision regarding penalty. Aggravating and mitigating factors, if any, pertaining to the events in question, will be considered. Proportionality is an important element to be considered by the Committee. The most severe penalties should be imposed for the most serious transgressions.

It is not disputed that similar cases should, in general, result in similar sanctions. In this regard, the Committee referred to the ruling of the Divisional Court of Ontario in the case of *Stevens v. the Law Society of Upper Canada (1979)*, which states:

"A conscious comparison should be made between the case under consideration and similar cases wherein sentences were imposed. If the comparison with other cases is not undertaken, there may well be such a wide variation in the results so as to constitute not simply unfairness but injustice. Considerations of such a nature should have as great a significance for professional discipline bodies with the power to impose onerous penalties as they do for Courts of Appeal and of first instance dealing with sentences upon conviction of criminal offences."

Although Committee decisions are not binding as precedent, the Committee accepts as a principle of fairness that like cases should be treated alike. Accordingly, the Committee thoroughly reviewed the similar cases which were provided by counsel for both the College and Dr. Minnes. Each case is, however, unique. While a review of similar decisions can often disclose some commonality between the facts of the case under

consideration and previous factual situations, there will be differences reflecting the individual circumstances of the cases. The challenge for the Committee is to carefully consider all of the facts and circumstances of the case and, by weighing the accepted principles of penalty in a fashion that takes into account the unique features of the case, to arrive at a fair and just decision.

THE HOSPITAL INCIDENTS

The hospital incidents are concerning for several reasons. They demonstrate a pattern of intrusive and unwanted touching of female staff which continued over a number of years, with a number of different staff members. Dr. Minnes' behaviour persisted despite the fact that he was informed many times that his actions were inappropriate, and warned to desist. His conduct caused significant discomfort to the staff involved, and disrupted the workplace environment to some extent. Some staff went out of their way to avoid him and, in the case of Ms B as reflected in her impact statement, suffered psychological harm. There is no evidence that patient care was adversely affected. Dr. Minnes was apparently oblivious to the impact of his actions on others, despite repeated warnings, until he commenced therapy with Dr. K in 2009, which was at the direction of the hospital.

The evidence is, however, that there are significant mitigating factors with respect to this finding. Dr. Minnes has accepted responsibility for his behaviour at the hospital. He acknowledged, in a meeting with his Department Chief in March 2009, that he had difficulty exercising appropriate self-control. At the hearing, he admitted that his actions constituted professional misconduct. He continued in therapy with Dr. K for a lengthy period of time, and Dr. K's report documents progress in therapy. Furthermore, without diminishing the potential for Dr. Minnes' behaviour to have traumatized the hospital staff, the behaviour itself amounted to relatively minor boundary violations. The frequency of the objectionable behaviour did diminish over time.

The Committee reviewed the case law pertaining to similar incidents of professional misconduct that had previously come before the Discipline Committee. In *CPSO v.*

Abawi (finding 2013; penalty 2014), the Committee imposed a four month suspension of Dr. Abawi's certificate of registration accompanied by the imposition of multiple conditions on his certificate of registration, following a finding that he had made unwanted sexual advances on a female nurse, allegations which the doctor denied. In *CPSO v. DJC* (2002), the Committee imposed a net suspension of six months after finding "a clear and consistent pattern of inappropriate verbal and physical behaviour", involving six nurses over a period of ten years, continuing after the physician was aware of the complaints. He had denied the allegations. In *CPSO v. Kernerman* (2004), the Committee revoked Dr. Kernerman's certificate of registration, following findings of inappropriate and sexually suggestive behaviour with female staff and others, in various locations, over a period of four years. While it was acknowledged that revocation might under the circumstances be considered unusually severe, Dr. Kernerman agreed with the penalty, as he was unable to continue practising medicine for other reasons. In *CPSO v. McInnis* (2011 and 2013), suspensions of three months and two months were separately imposed, following findings of sexual harassment and boundary violations involving both female patients and nurses, for which Dr. McInnis accepted responsibility. In *CPSO v. Saunders* (2008), a reprimand without suspension was imposed, after Dr. Saunders admitted that he had grabbed a female nurse in an inappropriate fashion on one occasion only. The case of *CPSO v. Markman* (1999), involving violent sexual assaults on several female staff members which resulted in criminal convictions, was so dissimilar to the facts pertaining to Dr. Minnes that it was not relied on by the Committee. Dr. Markman's certificate of registration was revoked.

Repeated boundary violations with staff in the workplace cannot be tolerated or condoned. To his credit, Dr. Minnes has accepted responsibility for his misbehaviour in this regard. He has attended therapy with Dr. K and has made progress in understanding his behaviour and its impact on others. The principle of general deterrence with respect to the membership as a whole, however, warrants a significant response from the Discipline Committee. All physicians must understand that this sort of behaviour is unacceptable.

The Committee finds that the hospital incidents findings, standing alone, warrant a penalty consisting of a public reprimand, suspension of Dr. Minnes' certificate of registration for three months, and a requirement for remediation with respect to boundary issues, including pursuing therapy. This penalty for the hospital findings, in the view of the Committee, would protect the public, maintain public confidence in the integrity and reputation of the profession, adequately address both general and specific deterrence, and provide for Dr. Minnes' ongoing rehabilitation. This penalty is consistent with previous decisions of the Discipline Committee in similar cases.

THE CAMP INCIDENT

The findings of the Committee with respect to the camp incident are extremely troubling. Dr. Minnes was found to have engaged in very intrusive and coercive sexual activities with a 17-year-old female adolescent. The complainant was, essentially, unknown to him; there had been some previous casual contact between the two, and he had invited her to his cabin, an invitation which she had accepted.

The complainant was not a patient of Dr. Minnes'. The power imbalance in the relationship between Dr. Minnes and the complainant, however, is striking. Dr. Minnes was the physician at the camp where the complainant was employed as a counsellor. He was a senior member of the staff, 47 years of age, and an experienced pediatrician. The complainant, age 17, had arrived at the camp for the first time just one week prior to the incident in question. She was by nature passive, shy, compliant, and deferential to authority.

The Committee has found that Dr. Minnes was in a clear position of authority with respect to the complainant, despite the absence of a doctor/patient relationship. Although there was not a pre-existing relationship between the complainant and Dr. Minnes on which feelings of personal trust could be based, Dr. Minnes' position as camp physician conveyed an expectation that he could be trusted. The complainant had a right to expect that Dr. Minnes, in his interactions with her, would be professional and trustworthy. The Committee found that Dr. Minnes had abused his position of authority and trust vis à vis

the complainant, in order to take advantage of her for his sexual gratification. He behaved in a fashion which the Committee characterizes as manipulative, coercive, opportunistic, and, seemingly, predatory.

The Committee reviewed the case law submitted by counsel for both the College and Dr. Minnes pertaining to previous decisions of the Discipline Committee and of the Law Society of Upper Canada, in circumstances entailing some similarities to the current set of facts.

It is clear to the Committee that the misuse of a position of trust and authority, in order to take sexual advantage of a vulnerable victim under the age of 18 years, conveys an added dimension with respect to the gravity of the offending behaviour. Consent on the part of the victim is not possible under the circumstances, even if the victim acquiesces. It is noted that consent was not raised as an issue in Dr. Minnes' case. In a criminal context, the issues are clearly elucidated in the Supreme Court of Canada case of *R. v. Audet* (1996), which the Committee reviewed. The Committee recognizes fully that there was no criminal charge or conviction in respect of this matter.

The issue has arisen in previous decisions of professional discipline committees. In this regard, three cases involving disciplinary proceedings of the Law Society of Upper Canada were presented and reviewed by the Committee. In *Cwinn v. the Law Society of Upper Canada* (1980), the lawyer was disbarred for having seduced a number of young girls over a four year period, misusing relationships of dependence, trust and confidence in him which he had established with the victims. In the *Law Society of Upper Canada v. Agnew Johnston* (2001), Mr. Johnston was disbarred for having solicited sexual activity with underage prostitutes whom he had encountered in his work as a Crown Attorney in Thunder Bay; the Discipline Committee of the Law Society emphasized the misuse of his position of authority with respect to the victims, and the significance of the exploitative nature of his activities in eroding public trust in the legal profession. In the *Law Society of Upper Canada v. Budd* (2009), the lawyer was disbarred for having engaged in

longstanding sexual relationships with several adolescent females, exploiting relationships of trust which he had established with them as a friend of their family.

In the medical context, the previous decisions of the Discipline Committee of the College of Physicians and Surgeons of Ontario available for review disclosed some similarities to the facts pertaining to Dr. Minnes, and also differences. The most salient aspect of the finding against Dr. Minnes is that he misused his position of trust and authority in relation to a vulnerable adolescent female, essentially a stranger to him, outside a doctor/patient relationship. This factual situation is unique, but the case law reviewed was nevertheless instructive to the Committee.

Within the doctor/patient relationship, there is one past decision reviewed which pertained to the sexual victimization by a male pediatrician of an adolescent female. This is the case of *CPSO v. Noriega (2003)*. Dr. Noriega engaged in progressively intrusive sexual touching with his 17-year-old female patient under the guise of legitimate medical examinations, on three separate occasions in fairly close temporal proximity. While not admitting to the allegations of the complainant, he did not contest them. The Committee suspended his certificate of registration for a net period of nine months, and also ordered a reprimand and restrictions on his practice.

The Committee found some similarities, also, to the case of *CPSO v. Sandejas (2001)*. Dr. Sandejas' certificate of registration was suspended for a net period of twelve months, with a reprimand and restrictions on his practice, following a criminal conviction for sexual interference in relation to his young stepdaughter. Mitigating factors in that case included Dr. Sandejas' acceptance of responsibility, his engagement in therapy, and the wishes of his family.

Several of the cases reviewed by the Committee involved previous decisions of the Discipline Committee involving sexual activity between a physician and an adult female patient, and/or a former patient, or in circumstances where there were some professional services rendered by the physician which fell short of establishing a doctor/patient

relationship. The case of *CPSO v. Lee (2009)* resulted in the suspension of Dr. Lee's certificate of registration for six months after he was found to have engaged in sexual activities with an adult female patient, allegations which he denied. *CPSO v. Karkanis (2010)* resulted in a five month suspension of the doctor's certificate of registration for sexual activities with a former patient, again an adult female. The case of *CPSO v. Abouelnasr (2006)* resulted in a six month suspension of Dr. Abouelnasr's certificate of registration, for sexual misconduct with an adult female who was not his patient at the time. In the case of *CPSO v. Redhead (2013)*, the physician's certificate of registration was suspended for five months for a sexual affair with an adult female who was formerly his patient. The case of *CPSO v. Turton (1994)* involved a sexual relationship between the physician and an adult female whom he had seen in the emergency department; Dr. Turton's certificate of registration was suspended for a net suspension of three months, provided that certain conditions were met.

None of these latter cases involved a victim or complainant under the age of 18, and this in part distinguishes them from this case. In the view of the Committee, Dr. Minnes' exploitation of his position of trust and authority with respect to the 17-year-old victim is key to understanding the gravity of the offending behaviour.

The circumstances of each case are unique. In the cases referred to above, the physician in some cases accepted full or partial responsibility for his behaviour, and in other cases did not. The acceptance of responsibility, with implications for insight into the wrongfulness of the behaviour in question, is generally seen as a mitigating factor. However, as addressed further in these reasons, Dr. Minnes has not accepted responsibility for his behaviour in the camp incident. The Committee finds no significant mitigating factors with respect to this incident apart from Dr. Minnes' lack of a previous disciplinary history with the College, which was considered.

It is apparent that several previous decisions of the Discipline Committee of the College of Physicians and Surgeons of Ontario involving sexual transgression perpetrated by male physicians on females did not result in revocation of the physician's certificate of

registration. Revocation is the most severe penalty which can be imposed by the Discipline Committee. It can be expected to cause severe hardship to the physician. The Divisional Court of Ontario has stated in the case of *CPSO v. Boodoosingh (1990)* that “revocation should be reserved for repeat offenders and the most serious cases”.

Nevertheless, the following should also be considered. Revocation is not “a professional death sentence”. Physicians whose certificates of registration are revoked are eligible to apply for reinstatement of their certificates after a specified period of time; in Dr. Minnes’ case, this period is one year. Revocation is one of a range of options to be considered by the Committee as it seeks a just penalty, which adequately addresses the principles outlined earlier. The weightings of these various principles will in each case be determined by the specific facts of the case. There will be some cases where the factual findings will compel revocation in order to do justice to one or more of the driving principles. The Committee has decided that this is one of those cases.

The protection of the public is one of the paramount considerations for the Committee in imposing penalty. In this regard, the Committee finds as follows.

The broader context of, and possible motivations for Dr. Minnes’ behaviour in the camp incident, remain completely unknown to the Committee, which is left with many unanswered questions based on the evidence which it heard. Was this an isolated incident of egregiously poor judgement on the part of Dr. Minnes, or are other factors at play? Was it primarily a problem of impulse control, or does it reflect more ingrained patterns of deviant thinking and behaviour? Has Dr. Minnes undertaken any sort of introspection with the aim of developing insight and, if not, is he capable of doing so in the future? Is he motivated to pursue psychotherapy and, if so, what is the prognosis for favourable change, and over what anticipated period of time? Crucially, what is the risk of repetition of similar behaviour in the future?

The Committee cannot speculate on the answers to these questions. It is left only with the established facts. The particulars of Dr. Minnes’ behaviour with the complainant in the

camp incident confirm that, at that time, he was acting in a manner hazardous to public safety. His actions had the potential to severely traumatize the victim and to cause psychological harm. He is a pediatrician, and adolescent patients will be part of the patient community which he serves in the future. He cannot be permitted to continue to practise medicine until such time as it can clearly be concluded that the risk of a repetition of such behaviour is negligible. The evidence before this Committee does not support this conclusion at present.

Given the findings of the Committee, Dr. Minnes has not accepted responsibility for his actions. The Committee has not heard any explanation for his misconduct. A risk assessment by a qualified expert in the assessment and treatment of deviant sexual behaviour, which would seem to be a logical first step to assist the Committee in determining when and under what conditions it would be safe to allow Dr. Minnes to practise pediatrics, has apparently not been undertaken. Dr. Minnes did engage in extended therapy with Dr. K with respect to the boundary violations which are reflected in the hospital incidents. However, there was no psychiatric report before the Committee that makes mention of the camp incident, nor of the larger issue of possible deviant sexuality and of what could or should be done to address this problem in therapy. Moreover, Dr. K's report of February 29, 2012 is now dated. The Committee has heard no evidence pertaining to Dr. Minnes' progress during the subsequent phase of the 20 more group sessions said to be beginning in mid-February 2012, which were contemplated at the time of the report, or to any events since then. The Committee does not know if Dr. Minnes is still in therapy with Dr. K, or anyone else. If he is not, it is not known why therapy was terminated. Dr. K's report, essentially, contains nothing which would support the conclusion that, in light of the factual findings which have been made pertaining to the camp incident, Dr. Minnes is now safe to return to practise.

Counsel for Dr. Minnes suggests that he is prepared to see Dr. R, who advertises herself as a specialist in the treatment of high risk behaviours. This proposal does show some promise in terms of eventually addressing Dr. Minnes' rehabilitation. While the Committee was presented with an outline of Dr. R's program, however, we have no

documented evidence that Dr. Minnes has yet been seen or assessed by Dr. R. The Committee does not know whether a risk assessment has been done by her, or if one is contemplated. The Committee has no specific information about what form of treatment or therapy she proposes to undertake with Dr. Minnes, over what period of time and with what expected or hoped for outcomes. In that Dr. Minnes apparently has yet to accept responsibility and gain insight for his misconduct in the camp incident, the Committee does not know whether he is, in fact, a suitable candidate for conventional therapy. In short, while the Committee does encourage Dr. Minnes to investigate all therapeutic options including the services offered by Dr. R, any gains that might eventually be derived are entirely a matter of speculation at this point. The Committee cannot make decisions crucial to the protection of the public based on speculation.

The Committee considered the many letters of support submitted by counsel for Dr. Minnes. These letters, in general, speak to his many positive attributes as a person, father, and physician. The Committee does not doubt the quality of these insights into Dr. Minnes' character. Nevertheless, in arriving at a decision regarding a suitable penalty for the misconduct committed, character references can be of only limited utility. The Committee agrees with the observation of the Discipline Committee in the case of *CPSO v. Gillen (2010)*, in the context of a hearing into Dr. Gillen's application for reinstatement of his Certificate of Registration, which states:

"This Committee does not believe character evidence should be given much weight when dealing with sexual offences. By their nature, these offences take place in private and have little connection to the external persona of the perpetrator. It is certainly possible for the abuser to be thought a fine, upstanding citizen and to be sexually deviant in his private sphere..."

The character references pertaining to Dr. Minnes stand in dark contrast to the findings of sexual misconduct made by the Committee. The resulting incongruity requires an explanation and, thus far, none has been provided. The dichotomy, in fact, between what appears to be Dr. Minnes' "external persona" and his "private" behaviour is itself concerning from the perspective of future risk.

Dr. Minnes is not a repeat offender. Two separate findings of professional misconduct have been made against him, however, the camp incident is far more concerning from a public safety perspective. In the opinion of the Committee, this is one of “the most serious cases” as enunciated by the Divisional Court in *CPSO v. Boodoosingh (1990)*. Dr. Minnes is a pediatrician who behaved in an egregious and disgraceful fashion by sexually victimizing a 17-year-old girl. His behaviour traumatized the victim, disgraced himself, and brings the entire profession into disrepute.

The maintenance of public confidence in the integrity and reputation of the medical profession, and in its capacity for effective self-governance is also a paramount consideration in this case. The Committee agrees, again, with the Discipline Committee in *CPSO v. Gillen*, which states:

“Public confidence is essential. In Adams v. the Law Society of Alberta (2000), 11 W.W.R. 280, at page 3, the Alberta Court of Appeal highlights the weight of what the College must do: “This public dimension is of critical significance to the mandate of professional disciplinary bodies” With the monopolistic right of self-regulation, the College bears an extraordinary responsibility. The government and the public properly expect that the College will fulfill its role in self-regulation including having due regard for the public confidence in how it goes about doing so”.

The Law Society of Upper Canada, in the matter of Agnew Johnston, states:

“Clients need to be able to trust their lawyers, both as individuals and as members of the legal profession, and young persons need to be able to trust adults and those in positions of trust. The actions and misconduct of this lawyer strike so strongly to the quick of the essence of the legal profession that no other penalty is appropriate nor available. A suspension, even a lengthy suspension, is an inappropriate and inadequate response to this misconduct. A suspension reflects neither the gravity of this misconduct nor the Law Society’s rejection of the misconduct as behaviour unsuitable for lawyers. The public would not understand a suspension as a suitable response from the Law Society to this misconduct. The lawyer must be disbarred.”

The Committee adopts a similar line of reasoning with respect to Dr. Minnes and the penalty necessary to adequately address the issues of maintenance of public confidence in the integrity and reputation of the medical profession, and in effective self-governance in the public interest. Although there are differences in the factual circumstances pertaining to Mr. Johnston and Dr. Minnes, there are also compelling similarities. The most striking

similarity is the abuse of power, by a person in a position of trust and authority, in order to sexually victimize a vulnerable adolescent. In the view of the Committee, the overall impact of these two cases, in terms of public confidence in the integrity of the respective professions law and medicine, is the same.

In conclusion, in light of the serious and appalling nature of the offending behaviour in the camp incident, the need to protect the public, and the need to maintain public confidence in the integrity of the medical profession and its ability to govern itself effectively, the Committee concludes that Dr. Minnes' certificate of registration must be revoked.

Although the Committee has concluded that revocation is the appropriate penalty in respect to the findings on the camp incident alone, the Committee has determined that there is an even stronger case for revocation on the basis of the findings on the hospital incidents and camp incident combined. For the reasons set out above, revocation is the appropriate penalty in this case, taking into account the serious misconduct reflected in both findings together.

ORDER

Therefore, the Committee orders and directs that:

1. the Registrar revoke Dr. Minnes' certificate of registration, effective immediately;
2. Dr. Minnes appear before the Committee to be reprimanded, and that the reprimand be recorded on the register; and
3. the parties make written submissions with respect to the costs payable to the College, to be exchanged and filed with the Hearings Office of the College, within 14 days of the date of this decision.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Bruce Gordon Minnes, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name and any information that could disclose the identity of the complainant on the motion and in the hearing under subsection 45(3) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also made an order to prohibit the publication of the name or identity of the complainant 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.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v.
Minnes, 2015 ONCPSD 36**

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. BRUCE GORDON MINNES

PANEL MEMBERS:

**DR. S. BODLEY (CHAIR)
D. DOHERTY
DR. R. SHEPPARD
DR. E. ATTIA (Ph.D.)
DR. D. KRAFTCHECK**

Hearing Dates:	January 15 to 17, May 12 to 15, 2014
Finding Decision Date:	September 29, 2014
Penalty Hearing Date:	December 2, 2014
Penalty Decision Date:	January 19, 2015
Release of Costs Order:	October 9, 2015

PUBLICATION BAN

ORDER AND REASONS ON COSTS

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on January 15 to 17; May 12 to 15; and December 2, 2014. On September 29, 2014, the Committee found that Dr. Minnes committed acts of professional misconduct, in that he has engaged in conduct or an act or acts 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 January 19, 2015, the Committee released its penalty decision in this matter, revoking Dr. Minnes’ certificate of registration, effective immediately, and ordering him to appear before the Committee to be reprimanded, and that the reprimand be recorded on the register. The Committee provided the parties with fourteen days to make written submission with respect of the costs of the hearing.

The College submitted that it should be awarded its legal costs and expenses at the tariff rate of \$4,460.00 per day for eight days (seven hearing days, plus one day of penalty hearing), for a total of \$35,680.00. The College submitted that it would be unfair to have the general membership shoulder the costs of a successful prosecution. Counsel for Dr. Minnes submitted that this is not an appropriate case in which to award the College the full tariff rate for its hearing costs. Counsel for Dr. Minnes submits that a reduction of 50%, for a total award of \$17,840.00 is fair and reasonable in the circumstances.

DECISION

In view of divided success in the result at the hearing and for the additional reasons stated below, the Committee awards costs to the College in the amount of \$17,840.00.

REASONS FOR DECISION

Dr. Minnes has been found guilty of professional misconduct in relation to two separate sets of allegations. The details of the findings are set out in the Committee’s Decision and Reasons for Decision, and will not be repeated here.

Briefly, the Committee found that Dr. Minnes' conduct at Hospital 1, where he was employed at the time, demonstrated a pattern of disturbing behaviour towards female staff at the hospital, including boundary violations and unwanted touching ("the hospital allegations"). The Committee found such conduct to be disgraceful, dishonourable or unprofessional. Dr. Minnes admitted to these allegations.

Further, the Committee found that Dr. Minnes, in a completely separate set of circumstances, had misused his position of trust and authority as a volunteer physician at a summer camp in order to subject a 17-year-old female camp counsellor to highly objectionable, coercive, overtly sexual advances ("the camp allegations"). Dr. Minnes did not admit to these allegations. The Committee did not believe his denials, and found his conduct to have been disgraceful, dishonourable or unprofessional. The Committee also found that the complainant was not a patient of Dr. Minnes', and thus the allegation of the College that he had sexually abused a patient was not proven.

The Committee found that the professional misconduct in question was of an extremely serious nature, and that it necessitated revocation of Dr. Minnes' certificate of registration. The reasons for this decision are set out in the Committee's Decision and Reasons on Penalty.

There is no dispute between the parties that the Committee has the authority to order the member to pay costs to the College. This is set out in the *Health Professions Procedural Code* ("The Code") section 53(1). In an appropriate case, a member found to have committed professional misconduct or to be incompetent may be ordered to pay all or part of the following costs and expenses:

- 1) the College's legal costs and expenses;
- 2) the College's costs and expenses incurred in investigating the matter; and
- 3) the College's costs and expenses incurred in conducting the hearing.

As the Code makes clear, a costs award is at the discretion of the Committee. It is for the panel to decide, in light of all the facts and circumstances, if this is an appropriate case in which to award costs, and the amount to be awarded.

There was no issue between the parties whether this is an appropriate case in which to order costs; the issue was the quantum of costs to be awarded. The Committee took some guidance from the case law in this area. It is generally agreed that factors to be considered include:

- 1) the nature of the misconduct;
- 2) the conduct of the member during the hearing; and
- 3) the relative success of the parties at the hearing.

In *Hills v. Provincial Dental Board of Nova Scotia*, 2009 NSCA 13, the Nova Scotia Court of Appeal, indicated that the panel should attempt to balance the effects of a costs award on the member against the need for the regulatory authority to effectively administer the disciplinary process. The Court stated that costs awards ought not to be punitive.

The Committee carefully considered the submissions of counsel with respect to these factors.

The Committee agrees that the nature of the misconduct committed by Dr. Minnes was extremely serious. The penalty imposed by the Committee, revocation of Dr. Minnes' certificate of registration, reflects the Committee's decision that, in the interests of the protection of the public and the maintenance of public confidence in the integrity of the profession, he could not be permitted to continue to practise medicine.

Dr. Minnes' conduct at the hearing, in the view of the Committee, was not inappropriate. He did provide an exculpatory explanation with respect to the camp allegations which the Committee, in the end, did not believe; nevertheless, he was entitled to defend himself as

he saw fit. The hearing itself was not unnecessarily prolonged by the conduct of Dr. Minnes.

The College was successful in proving that Dr. Minnes' conduct, with respect to both sets of allegations, was disgraceful, dishonourable or unprofessional. The College was not successful in proving that Dr. Minnes had sexually abused a patient. This was a very serious allegation which the Committee found was not established on the evidence.

In attempting to balance the effects of a costs award on Dr. Minnes against the need for the College to maintain an effective disciplinary process, and to ensure that a costs award would not be unduly punitive, the Committee considered the submissions of counsel for Dr. Minnes with respect to the hardships which he continues to suffer arising from the disciplinary process. These appear to be very real. Dr. Minnes has not been able to practise medicine since September 2012. He resigned from his position at Hospital 1 in June 2014. Until recently, he had apparently supported himself through part-time employment as a cleaner at a yoga studio; the Committee was informed, however, that he has now been terminated from this position. His financial circumstances appear to be quite precarious, and his prospects for future employment are bleak. Moreover the nature of the findings made by the Committee, and the resulting publicity, inevitably expose Dr. Minnes to severe disapprobation by his former colleagues, and the community in general. The Committee recognizes that Dr. Minnes is himself responsible for his precarious financial situation and the public disapprobation that resulted from his misconduct.

The Committee accepts the College's position that it would be unfair for the general membership to bear the full costs of a successful prosecution. The College, however, was not successful in proving all of the allegations made against Dr. Minnes. While the nature of the professional misconduct which he committed was extremely serious, revocation of his certificate of registration has already penalized him severely.

The Committee finds that, in consideration of all the circumstances, this is an appropriate case in which to award costs to the College. The Committee accepts the submission of

counsel for Dr. Minnes that costs should be awarded at 50% of the College's tariff rate for an 8 day hearing, for a total award of \$17,840.00.

ORDER

Therefore, the Discipline Committee orders Dr. Minnes to pay costs to the College in the amount of \$17,840.00 within 90 days of the date of this Order.