

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Lee, this is notice that the Discipline Committee ordered shall be a ban on the publication, including broadcasting, of the names or identifying information of any witnesses, who are patients testifying with respect to allegations of sexual misconduct, under subsection 47(1) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also ordered a ban on publication of the names and any information that could disclose the identity of patients referred to orally or in the exhibits filed at the hearing under subsection 45(3) of the Code.

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

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

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; 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. Lee, M.M.S.,
2017 ONCPSD 2**

**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. MARTIN M. S. LEE

PANEL MEMBERS:

**DR. B. LENT (CHAIR)
MR. S. BERI
DR. P. ZITER
MR. P. GIROUX
DR. S. YOUNG**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF
ONTARIO:**

MS. M. KELLYTHORNE

COUNSEL FOR DR. LEE:

**MR. P. VEEL
MR. M. VENEZIANO**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS. J. MCALEER

PUBLICATION BAN

Hearing Dates: July 18, 19, 21, and 22, 2016
Decision Date: January 18, 2017
Release of Written Reasons Date: January 18, 2017

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 July 18, 19, 21, and 22, 2016. At the conclusion of the hearing, the Committee reserved its finding.

ALLEGATIONS

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

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

RESPONSE TO THE ALLEGATIONS

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

OVERVIEW

Dr. Lee is a rheumatologist now practising in Mississauga. During the relevant time period, Dr. Lee practised in both Pickering and Mississauga. The allegations of sexual abuse and disgraceful, dishonourable, or unprofessional conduct arise from the clinical care Dr. Lee provided to three female patients.

These patients saw Dr. Lee for the treatment of pain and fibromyalgia between January 2008 and June 2012. Each patient reports that, during the course of treatment, she had concerns regarding Dr. Lee’s conduct, which included inappropriate sexual remarks and

the use of vulgar language. The patients alleged that Dr. Lee asked unnecessary questions about their personal sex lives. They also alleged that Dr. Lee shared information about his own sex life. One of the patients alleged that Dr. Lee showed her an obscene video, and another patient claimed that he showed her a pornographic magazine. One of the patients alleged sexualized physical contact. Allegations were also made that Dr. Lee shared information about other patients, breaching patient confidentiality. In addition, it was alleged that Dr. Lee charged a cash fee for prescription writing and also asked one patient to fill a script for him, in order to use her benefits. It was further alleged that Dr. Lee asked one patient to videotape or photograph another patient thought to have been selling narcotics.

This case raises the two following issues with respect to each patient:

- (i) Did Dr. Lee's conduct constitute sexual abuse? and
- (ii) Would Dr. Lee's conduct be reasonably regarded by members of the profession as disgraceful, dishonourable or unprofessional?

The College called three witnesses: Patient A, Patient B and Patient C.

Several exhibits were filed. Dr. Lee testified on his own behalf.

ADMISSIBILITY OF SIMILAR FACT EVIDENCE

After all of the evidence was presented, and just before the start of closing submissions, College counsel notified counsel for Dr. Lee that she intended to argue that the evidence of each complainant could be used as similar fact evidence with respect to the allegations pertaining to each of the other complainants. Counsel for Dr. Lee objected to the College's argument on the basis that the College had provided no prior notice that it intended to bring an application for the use of similar fact evidence. Counsel for Dr. Lee sought a short adjournment to consider its position. The Committee granted the adjournment and asked the parties to provide oral submissions on the issue the following morning.

Similar fact evidence is presumptively inadmissible. The onus is on the College to satisfy the Committee on a balance of probabilities that, in the context of the particular case, the probative value of the evidence in relation to a particular issue outweighs its potential prejudice and thereby justifies its admission. When dealing with multiple allegations with different patients, the evidence in relation to one allegation is presumptively inadmissible in relation to the other allegations. In order for the evidence of one patient to be considered in relation to those other allegations, it must be admissible as similar fact evidence.

In this case, the College informed the Committee that the similar fact evidence upon which it sought to rely was each of the three patients' evidence that Dr. Lee made sexual remarks and posed sexual questions to each of them during medical appointments. The College submitted that the live issue to which the similar fact evidence relates is whether Dr. Lee made such sexual remarks and posed such sexual questions to each patient as alleged.

The first issue to be determined was whether the College was precluded from bringing its application to rely on similar fact evidence because it had not provided prior notice to the defence. The Committee agreed to consider that issue before engaging in any analysis with respect to whether or not the test for similar fact evidence was satisfied in this case.

As a starting point, the Discipline Committee's Rules of Procedure do not specify if or when the College has to give notice that it intends to bring an application to rely on similar fact evidence. Nor do the Rules address whether or not such an application is necessary, as opposed to the College simply arguing the admissibility of such evidence in its closing submissions, which is what College counsel had intended to do in this case.

The Ontario Court of Appeal addressed the issue of whether or not notice of the intention to bring a similar fact evidence application is required in *R. v.*

T.B.L. (2003) 173 OAC 159. This was a criminal case dealing with allegations of historic sexual abuse by two complainants. The issue was whether the jury could use the similar fact evidence of one complainant in deciding whether the case had been proven with respect to the other complainant. One of the grounds of appeal was the fact that the Crown had not given notice of its intention to rely on similar fact evidence during the evidentiary stage of the trial. Instead, the Crown raised the issue for the first time at a pre-charge hearing, which took place after the evidence has been completed.

The Court of Appeal rejected the underlying premise that the Crown was obliged to give the defence advance notice of its intention to use the complainant's evidence as similar fact evidence. The Court stated, "As a matter of law the defence knew or should have known that this possibility existed from the outset. Absent an express undertaking from the Crown not to use the evidence in this fashion (of which there is none here) the defence cannot claim that it was misled." Finding no obligation to give advance notice, the Court then went on to consider the defence argument that had timely notice been given, it would have altered the defence strategy "in any meaningful way." The Court noted that the essence of the defence had been that the complainants and their immediate family members had conspired together to "get" the appellant and their evidence was the product of collusion. This theme was pervasive throughout the trial and it was fanciful to think that it would have received more attention had the defence been alerted to the similar fact issue.

Although it was not binding, the Committee found the New Brunswick Court of Appeal decision in *R. v. Michaud*, 2012 NBCA 77 (CanLII) to be helpful. In that case, the accused also argued that similar fact evidence could only be admitted if he had received notice of it prior to embarking on his defence. After reviewing the jurisprudence and academic authorities, the New Brunswick Court of Appeal found as follows:

[42] What I discern from a review of academic writings, the commonly accepted practice, and the jurisprudence is this: (1) for the sake of fairness, there is a clear expectation that the prosecutor will apply, or give notice of intention, to have the Court consider similar fact evidence; (2) the prosecution's application is made, or the notice of intention is given, in a timely fashion and, at the very latest, as the prosecution closes its case; and (3) except where agreement is reached to argue the admissibility question at the end of the case, the determination of admissibility is made before the accused embarks on his or her defence.

[...]

[45] In my view, the propositions in academic writings and case law, together with the generally accepted practice, regarding notice and adjudication of similar fact issues before an accused embarks on his/her defence, can be reconciled with *T.B.L.* and, for that matter with *deKock*, by the rejection of a strict procedural rule requiring the prosecution to always give advance notice of its intention to use certain evidence as similar fact evidence. I cannot rationalize an inflexible rule of law that would automatically exclude such evidence for the mere failure of the prosecution to follow the usual procedure. Oversights happen! On the other hand, there is no need to cite authority for the proposition that courts must react where trial fairness may have been compromised. Thus, in my view, where timely notice is not given and where adjudication of a similar fact issue is not sought until after an accused embarks on his/her defence, similar fact evidence should not be admitted where it is shown that the lack of notice, or the late adjudication of the issue, has occasioned prejudice to the defence and resulted in an unfair trial.

[46] I believe that timely notice, together with adjudication of a similar fact issue before an accused embarks on a defence, is already the norm throughout the country. In my view, there is a sound basis for this practice. It is the prosecution that knows if a similar fact evidence issue will be raised and it is only fair that it advise the defence at the earliest opportunity and only fair that, in the absence of an agreement to defer the matter until the very end of trial, the issue be determined before an accused embarks on his/her defence. While I decline, as did the Ontario Court of Appeal in *T.B.L.*, to recognize this practice as a strict rule of law, I certainly allow, as I believe the Ontario Court did, that, in situations where prejudice to the defence can be shown, the similar fact evidence should be rejected on the basis of untimely notice or late adjudication of the issue.

The Committee found that there is no authority indicating that the College must provide notice that it intends to rely on similar fact evidence. However, the Committee also found that it has discretion to refuse to hear a similar fact evidence application if the defence can show it has been prejudiced as a result of not receiving prior notice of the College's intention to bring such an application.

Although the onus of proof of the allegations is always on the College, the Committee determined that the evidentiary burden was on Dr. Lee to show that the defence had been prejudiced as a result of the College's failure to provide prior notice.

Counsel for Dr. Lee argued that if the College had given timely notice of its intention to lead similar fact evidence, defence counsel would have asked different questions during the course of the hearing and would have explored different areas than it did.

The Committee accepted that Dr. Lee's strategy and line of questioning would have been different if he had received notice of the College's intention to lead

similar fact evidence. In particular, the Committee found that the possibility of contamination of the three patients was a possibility that was not addressed in cross-examination. The Committee was persuaded that counsel for Dr. Lee would have conducted the defence differently if they had received notice that the College intended to advance a similar fact evidence argument. As a result, the Committee found that Dr. Lee would be prejudiced if such an application was permitted to proceed at the stage of closing submissions, since there had been no prior notice to the defence that the College intended to advance such an argument.

Consequently, the Committee allowed the defence's objection. The College was neither permitted to bring its application nor argue for the admission of similar fact evidence due to the fact it had failed to provide advance notice to the defence, which the Committee found resulted in prejudice to the defence. Therefore, the Committee judged the allegations of each patient independently, without any reference to the evidence of the other complainants.

SUMMARY OF THE EVIDENCE

Patient A

Patient A is a woman in her 30's and is presently disabled. She last worked approximately nine years ago doing odd jobs.

In 2008, Patient A was diagnosed with fibromyalgia and was referred by her family physician to Dr. Lee. She saw Dr. Lee once or twice a week for trigger point injections until approximately 2011.

Patient A testified that Dr. Lee was not always professional in his communications with her. She testified that, "I guess the biggest question that was most commonly asked was the varying sexual positions that my husband and I would engage in, or sexual acts that we would engage in. He would ask if we engaged in oral sex, how often we did that, anal sex, type of positions we used even in, I guess, our standard heterosexual positions."

Patient A testified that Dr. Lee would discuss matters that were going on in his own marriage and his relationship with his wife. Patient A testified, “Things of a sexual nature that I guess he wasn’t satisfied ...Frequency, and I guess methods or types of positions that he would engage in with his wife or wanted to.” Patient A testified that this line of questioning started almost immediately upon seeing Dr. Lee, and that it happened quite often. Patient A reported that she would respond to these questions by “usually just awkward silence or smile and nod and back away. It’s uncomfortable. It’s none of his business. I don’t even discuss that with my friends.”

Patient A also reported that Dr. Lee would ask her questions about how certain sexual acts are performed between two men or two women. Patient A testified that during Gay Pride Week, he showed her a gay pornographic magazine and asked her, “What is S&M? What do they get from it? How could two men do that?”

Patient A also testified that there were instances when Dr. Lee discussed other patients with her. “I brought to his attention things that were going on in the clinic with other patients that I wasn’t comfortable with and I thought he needed to be aware of.” Patient A testified that she told Dr. Lee that she saw another patient trying to sell her medication downtown. Patient A testified that “I was asked to video tape it and provide him with videotape.”

Patient A testified that, on another occasion, Dr. Lee “was complaining quite frequently that he was writing too many prescriptions and that he had tennis elbow, and that he needed to be compensated for writing the prescriptions. So, he started charging each patient when they got prescriptions that was to be paid in cash.” Patient A reported that the fee was \$20.00 or \$25.00 and Dr. Lee did not issue a receipt.

Patient A reported that Dr. Lee was aware of the fact that she had a drug benefit plan. He would write prescriptions for the Marcaine solution he used for trigger point injections. On one occasion, Patient A asked Dr. Lee to write a prescription for Flamazine cream. She testified that “he asked me what it was for...and asked, if he wrote an extra repeat, if I would give him the additional tube of cream.” Patient A testified that she did not fill the prescription for the repeat.

Patient A did not make a complaint to the College. She testified that she did report this to her husband, but he respected her wishes not to report the incidents. Patient A went to her family doctor and asked for a referral to another specialist because she did not feel comfortable with Dr. Lee. Patient A told her family physician that a lot of her conversations with Dr. Lee were of a sexual nature. The next day, her family doctor informed Patient A that she was required to report the allegations to the College.

With respect to the College investigation and discipline proceedings, Patient A testified, “I wanted nothing to do with this. I’ve been in this I guess medical cycle most of my life and I’m not interested in ticking off a community that’s described as a brotherhood, and I have a very distinguishable last name. Whether I like it or not, I need the services of doctors and I didn’t want to be dismissed by doctors because I participated in it.”

On cross-examination, counsel for Dr. Lee asked Patient A about a 2010 psychiatric assessment. At that time, Patient A had apparently reported that she had some trust issues, problems with concentration and memory, panic attacks, and insomnia. Patient A did not deny any of these reported issues in her testimony.

Counsel for Dr. Lee asked Patient A why she did not fill all of the prescriptions for Flamazine cream at once with respect to the allegation that Dr. Lee asked her to get him a tube of the cream. Patient A testified that money was tight, and that it was often her practice to not fill her whole prescription at one time.

Patient A remembers paying Dr. Lee in cash for prescriptions he wrote, but does not remember how many times this happened. When asked whether or not he gave her a receipt, Patient A stated, “I don’t recall either way, to be honest with you.”

Patient A testified that she did remember buying fibro-cream from Dr. Lee at a charge of \$20.00. She testified that she believes Dr. Lee gave her a receipt. She was quite consistent with her statement that she was charged cash for prescriptions, not simply for the fibro-cream.

Patient A agreed with counsel for Dr. Lee that Dr. Lee began tapering down the dose of her narcotics starting in March 2010. Patient A agreed that this unfortunately caused her to have an increase in pain.

Counsel for Dr. Lee put to Patient A that this reduction in her narcotics dose caused her to be disgruntled, and that she was not happy with the tapering down of the narcotics. Patient A responded that “I wasn’t happy with the situation, but it was the way that it was explained to me was that it had to be done.”

Patient B

Patient B is a woman in her 50’s. Patient B testified that she has not worked for some time and is on disability support due to illness.

In her testimony, Patient B provided details about a domestic incident that resulted in her arrest several years ago. She was apparently kept in a holding cell for 24 hours and then transferred to another facility for two nights. She also testified about her relationship with her spouse, who later became ill and died.

Patient B testified that her family doctor referred her to Dr. Lee in 2008 after suffering from numerous health issues, including fibromyalgia. She was under Dr. Lee’s care from 2008 until early 2011.

When she started seeing Dr. Lee, Patient B was going three times a week for trigger point injections.

Patient B had concerns about her experience with Dr. Lee’s office. She described his office as disorganized. “Anybody could go in there, haul out their chart, could haul out anybody else’s chart,” she said.

Patient B testified that Dr. Lee’s examining rooms were dirty and that his office had a patient list that people would sign, and that Dr. Lee would see patients first-come, first-serve. Patient B testified that his office was “disorganized, chaotic, disgusting.” She claims that on one occasion she told Dr. Lee, “I don’t want to see other people’s stuff”.

Patient B alleged that on one occasion, Dr. Lee asked her about a specific pornographic internet video involving two women. Dr. Lee described the video to her and asked her if she had ever seen it, and that she answered that she had no interest in seeing it.

Patient B also testified that Dr. Lee asked her questions about her relationship with her spouse that were “a little bit too personal.... I felt like I was being violated.” Patient B testified that Dr. Lee asked her if her spouse ever performed oral sex on her, saying, “Did he ever go down on you?” Patient B testified that Dr. Lee also asked her questions about her time in detention and whether or not there was lesbian sexual activity while she was there. Patient B testified that she recalled Dr. Lee pursuing this line of questioning at least three times, and that she was utterly disgusted by it.

Patient B also testified that Dr. Lee asked her questions about a family member, who was another patient of Dr. Lee’s. Patient B testified, “I thought to myself, ‘Who knows what he is saying about me to other people or what he is saying about other people to me.’”

Patient B also testified that there were numerous occasions when Dr. Lee asked her if she knew about any other patients selling or trading their medications.

Patient B testified that she stopped seeing Dr. Lee after she moved following her husband’s death because Dr. Lee’s office was too far away from her new home.

Patient B also testified, “I was having flashbacks...I felt like I was being verbally and mentally raped and it is not a good feeling.”

Under cross-examination, Patient B was questioned about the incident between her and her spouse which led to her arrest. Patient B admitted that she pled guilty to the assault charge. She testified, “Look, I just want to get on with my life... And I think maybe if I just plead guilty, then good enough.” Patient B specifically denied that she assaulted her spouse with a specific object as alleged.

Counsel for Dr. Lee then asked Patient B about a 2011 consultation report indicating that she was hospitalized and was seen by a psychiatrist. The report documents that Patient B had a history of depression, blackouts, and memory loss. The report also documents that

“she had a problem with alcohol in the past, but for years she is not abusing alcohol. Once in a while, she will take one or two alcoholic drinks.”

Patient B disagreed with the accuracy of this report and stated, “that’s just ramblings from the psychiatrist.” When asked if she was suggesting that the psychiatrist made up something and put it into the note, Patient B answered, “Oh, absolutely.”

Patient B also stated that she used marijuana off and on since she was a teenager for pain relief. The psychiatrist’s report further states, “she also says that she has triggered flashbacks, previous sexual molestation.” Patient B admitted that this was true.

Counsel for Dr. Lee questioned Patient B about inconsistencies found in different opiate risk assessment forms found in her chart. The risk assessment form questions her abuse of alcohol or other drugs as well as history of preadolescent sexual abuse. Patient B testified that she did not answer these questions truthfully because “I didn’t think it would have any bearing on my treatment... I just wanted to get out the door and go home and rest.”

Counsel for Dr. Lee asked Patient B about a positive finding for cocaine from a urine drug screen. Patient B attempted to explain this finding by saying that she smoked marijuana with cocaine on it.

Counsel for Dr. Lee asked Patient B about inconsistencies between her testimony-in-chief and interviews with College investigators. On one occasion, she stated that Dr. Lee asked her questions about women over 40 becoming lesbians “on about ten occasions.” At other times, Patient B said this occurred “more than twice.” Patient B had no explanation for the different accounts.

Counsel for Dr. Lee asked Patient B whether she complained about Dr. Lee because he was lowering her opioids. Patient B responded that this was not the case.

Patient C

Patient C was Dr. Lee’s patient from about 2008 to 2012.

The College alleged that Dr. Lee engaged in sexual abuse of and/or disgraceful, dishonorable or unprofessional conduct towards Patient C. This included making sexual and/or inappropriate remarks to Patient C, and rubbing and/or pressing his genital area against Patient C during a medical appointment.

Patient C, a woman in her 50's, was diagnosed with arthritis and fibromyalgia. She was referred to Dr. Lee by her family doctor. At the time, she was a manager for a national company.

Dr. Lee treated Patient C for approximately seven years. These treatments consisted of prescribing analgesic medication as well as trigger point injections with Marcaine. Patient C testified that she saw Dr. Lee once or twice a week for these injections for approximately five years.

Patient C testified that, for the most part, Dr. Lee was professional in his communications with her, but that on occasion, he would ask her inappropriate, intimate questions. Patient C testified, "He would use language that was vulgar, and I just felt that they were not something that I should be hearing from a doctor. I don't swear, and I find this..... This, to me, is very difficult. But he would use the word 'cock,' and 'pussy' and 'fuck.'" She also testified that Dr. Lee asked questions like, "Is your husband's cock big?" and "Can he still put it in my pussy?"

Patient C reported that she didn't hear this type of language from Dr. Lee very often, and that it only happened two or three times.

Patient C also reported that, on one occasion, Dr. Lee rubbed his genitalia against her hip while he was administering a Marcaine injection. Patient C stated that she had no doubt that it was intentional, because he did it "a couple of times." She further testified, "I could feel him rubbing his genitalia area. I mean, it was through clothing, but there was no doubt that it was being rubbed against my hip." She went on to say that she pulled away and that she said to him, "Don't be doing that." When asked about Dr. Lee's reaction when she reprimanded him, she stated, "He got very flustered. But there is no doubt in my mind, from the action itself, that it was intentional."

Patient C also testified regarding Dr. Lee's office procedures with respect to appointments and patient flow. She recalled that he had two different secretaries during the time frame she was seeing him. The first secretary would often be outside having a cigarette. Patients would come in the office, pull their own files, and place them in a stack. Dr. Lee would take these files and see people in the order in which the files were stacked. Patients would often go behind the reception desk and pull their own file to put in the stack.

Once the second receptionist, who was quite efficient, started working for Dr. Lee, the practice of patients pulling their own file ended. Patient C also testified that there were times when she worked for Dr. Lee helping out with the secretarial tasks.

Patient C testified that she thought Dr. Lee was very compassionate and helpful.

Patient C did not initiate a complaint to the College. She was contacted by a College investigator and was asked directly whether or not there had been any incidents that she would deem inappropriate. Patient C testified that in response, she told the investigator the truth. She also confirmed on cross-examination that she told the investigator that nothing in his conduct made her feel terribly uncomfortable. She explained, "I'm not naïve. It's nothing that I haven't heard before. However, I felt that it was inappropriate coming from a doctor to his patient."

On cross-examination, Patient C agreed that she had hundreds of appointments with Dr. Lee, and that she thought this incident occurred roughly in the middle of the seven years she was seeing him. She agreed that she had not made a complaint to the College, had not reported the alleged rubbing of genitalia incident to her husband, and had continued to see Dr. Lee for treatment after the alleged rubbing incident. She responded that she had confidence in Dr. Lee's ability to treat her for her fibromyalgia.

Counsel for Dr. Lee challenged Patient C with respect to her use of the word "grinding" when recounting the incident in her testimony in chief, compared to her use of the term "rubbing" when speaking to the College investigators. Patient C responded, "but I'm telling you that he rubbed his genitalia against my right side in the, like, hip and thigh

area. And, I used the word grinding simply to explain the motion. So, it was a rubbing of kind----it was a--- I referred it to it as ‘rubbing,’ but it was kind of grinding because it was, you know, a little circular type of thing. I don’t know.” Patient C testified that she was absolutely sure that it was her right hip, upper thigh area.

Counsel for Dr. Lee also questioned Patient with respect to the difference in height between her and Dr. Lee, the fact that he was wearing a lab coat with a cell phone and keys in his pocket, and Dr. Lee’s evidence that he stood some distance away from her while preparing to give her the injection. Patient C could not recall all these details but was consistent with her recollection that she was positioned in the usual manner, standing and leaning towards the examining table with him approaching her from behind.

Patient C was very consistent in her testimony in asserting that, at the time of the incident, Dr. Lee was wearing a lab coat, was positioned to give her a trigger point injection from behind, and had rubbed his genitalia against her right hip area.

When asked why she did not report specific sexually charged words like “cock and pussy’ when questioned by the College investigator, Patient C answered, “I didn’t want to say those words. When we were speaking, I explained that they were what I call the ‘boy C word’ because I’m not comfortable saying it.”

Patient C was asked in cross-examination about a consultation she had with a neurologist. She did not deny that she told the neurologist that she was having problems with her memory, but explained in her testimony that her problems were specific to remembering names, numbers, and drugs, and that she had no difficulty remembering incidents. She admitted that her memory is not getting better with time but stated, “My memory of that event is very clear.”

Patient C was also asked about an appointment with a psychiatrist. She admitted that she discussed some horrible times in her life with the psychiatrist, which involved depression, sexual molestation, as well as problems with memory.

Counsel for Dr. Lee suggested to Patient C that given the six or seven years that had passed since the alleged incident, and given her significant past psychiatric and physical

history, she may have problems accurately remembering the alleged incident. Patient C denied this to be the case and explained that her memory difficulties pertain to matters such as dates, names of drugs, recognizing people and short term recall.

Patient C testified that she continued to see Dr. Lee after the incidents because he was the only fibromyalgia specialist in her area. When the trigger point injections were no longer of benefit, her family doctor took over the prescribing of her analgesic medication.

Dr. Lee

Dr. Lee testified in response to the allegations. The defence did not call any other witnesses.

Dr. Lee obtained his medical degree in 1989 from University of Toronto. Following his internship, he completed a residency in Internal Medicine in Kingston between 1990 and 1992. After that, he did a fellowship in rheumatology in Ottawa from 1993 to 1994.

In 1996, Dr. Lee opened an outpatient practice in rheumatology in 1996 at locations in Pickering and Mississauga. Between 2008 and 2012, he worked three days a week in Pickering and two days a week in Mississauga. In 2012, he closed his Pickering office because he felt “overstretched.”

Dr. Lee treated patients with rheumatic disorders such as rheumatoid arthritis, osteoarthritis, fibromyalgia, and chronic pain. He routinely administered trigger point injections. Dr. Lee testified that in 2012 he stopped prescribing narcotics because of data published by the Institute of Clinical Evaluative Sciences (ICES) which indicated significant risks with opiate use.

Dr. Lee testified that he had one full-time secretary in each office that would receive referrals and book appointments. He testified that he would also try to accommodate patients without appointments.

Dr. Lee answered all the questions put to him during the hearing in a calm manner and denied all of the allegations. Dr. Lee’s evidence with respect to each of the complainants was as follows.

(1) Patient A

Dr. Lee described Patient A as a pleasant person who was referred to him for severe chronic pain. Dr. Lee confirmed that she was being treated with narcotic medication. At the peak in 2010, she was taking OxyContin 80 mg 3 times a day with Percocet for breakthrough pain.

Dr. Lee testified that after reading the ICES guidelines in 2010, he substantially tapered down her narcotics to OxyContin 40 twice a day. When asked how Patient A reacted to the tapering down of her narcotic prescriptions, Dr. Lee stated, "I recall she was disgruntled," less engaged, and less communicative.

Dr. Lee denied that he asked Patient A questions about her sex life or discussed his own sex life with her. He denied that he showed Patient A a pornographic homosexual magazine or that he asked Patient A about other patients allegedly selling their medication.

Dr. Lee denied that he ever asked Patient A to videotape other patients selling medication. Dr. Lee denied charging Patient A for prescriptions or for the administration of injections, with the exception of the prescription for fibro-cream.

He was also asked by his lawyer if he had asked Patient A to give him one tube of Flamazine cream and he answered "untrue."

(2) Patient B

Dr. Lee confirmed that Patient B was his patient from 2008 to early 2011 after she was referred to him by her family physician for severe chronic pain.

Dr. Lee confirmed that Patient B was treated with various narcotic medications and received some trigger point injections. Patient B's narcotic use peaked in 2010 with OxyContin 20 mg twice a day. Dr. Lee testified that he thought Patient B was pleasant, but that she had become disgruntled when he tapered off her narcotics.

Dr. Lee testified that there was a lag in Patient B's usual office visits during a certain period one year because she was incarcerated for physical violence. Dr. Lee testified that he tapered Patient B's narcotics down to Percocet 1 tablet 3 times a day that year because of her history of violent behaviour.

Dr. Lee denied that Patient B advised him about chronic marijuana use. He testified that in 2010, he performed a random urine drug screen on Patient B which showed marijuana and some cocaine. Dr. Lee testified that Patient B had explained at that point that she had been on marijuana for some time but that she had not told him about it previously. Dr. Lee testified that Patient B had also told him the marijuana was tainted with cocaine, and that she had not deliberately taken cocaine.

When asked about opiate risk scores and if any discrepancies or alarming scores were discussed with the patients, Dr. Lee answered, "I cannot recall, but you're absolutely right, these points should've been clarified then, and I do understand my medical documentation as very scarce and the legibility is of concern."

Dr. Lee also confirmed that in the case of Patient B's positive urine drug screen for cocaine, there was no documentation in the chart that the patient was confronted about this or counseled about it. The Committee was concerned that even though a urine drug screen showed positive for cocaine, Dr. Lee did not adequately address this positive finding with Patient B and that he instead accepted her explanation that the marijuana she smoked was tainted with cocaine.

Dr. Lee denied that he discussed a pornographic video with Patient B as she had testified. Dr. Lee denied that he ever questioned Patient B about her sexual practices with her husband. He also denied that he made a number of comments about lesbians after Patient B's arrest. Dr. Lee also denied discussing other patients with Patient B.

When asked if he ever used sexual language with Patient B at any of her appointments, Dr. Lee answered, "I do recall one incident when she came in with a smile saying that she had the 'Big O' last night." Dr. Lee testified that he did not know what this meant, so he accordingly asked her. Dr. Lee testified that Patient B then explained to him that it

referred to an orgasm. Dr. Lee denied that he made any further sexual comments to Patient B after this discussion.

(3) *Patient C*

Dr. Lee confirmed that Patient C was his patient between 2005 and 2012 and that he also treated her husband. He recalled that Patient C had a significant past psychiatric history but was referred for the treatment of fibromyalgia. He confirmed that he treated her with narcotics and trigger point injections.

In 2010, Patient C's peak narcotic use was hydromorphone Contin 30 mg 3 times a day. Because of the ICES study, Dr. Lee tapered her medication to Percocet 1 tablet twice a day. Dr. Lee testified that Patient C "did have a bit of withdrawal." Dr. Lee also testified that Patient C was a very pleasant patient.

Dr. Lee confirmed that he started trigger point injections for Patient C in 2005 and continued these until 2012. He recalled that he injected Patient C's hip in the trochanteric bursa area.

Dr. Lee then demonstrated for the Committee how the typical injection would be done. In his demonstration, he explained that his practice was to wear a lab coat that was usually buttoned up and that he would typically have his cell phone and keys in his left pocket. He would typically have a prescription pad in his right pocket. Dr. Lee stated that he usually stood a foot and a half away from the patient because, "if I got any closer, it's harder to inject."

When asked about Patient C's recollection of bending over a table for the injection, Dr. Lee testified that this would be "very unusual because it would be harder for me, because she was taller than me. If she bent over, I would have to reach more. It's better if she stood up."

When asked if he ever used inappropriate words such as "cock" and "pussy" with Patient C, or if he asked Patient C if her husband's "cock was big," he stated, "I did not."

When asked about the allegation that during the course of a trigger point injection, he was grinding his genitalia in Patient C's right hip area intentionally with sexual intent, Dr. Lee answered, "Not possible. It's not my practice to do so."

In cross-examination, Dr. Lee confirmed that he worked 21 to 30 hours in Pickering per week and saw over 151 patients. He also saw another 101 to 150 patients in Mississauga. In total, Dr. Lee would see about 250 patients every week.

When asked if it was fair to say that Dr. Lee could not possibly recall most individual patient encounters, he answered, "except the ones that came frequently over a period of time."

Dr. Lee testified that he did not recall that Patient C ever worked in his office.

Dr. Lee agreed that it was fair to say that his record-keeping was such that not much is documented regarding patient encounters, and that patients often came unannounced without appointments.

With respect to the office practice of sign-in sheets for patient visits, Dr. Lee testified that he did have an appointment book. However, he testified, many patients came unannounced and they would sign a sign-in sheet in the waiting room. Dr. Lee was shown photocopies of three sign-in sheets from his office dated May 19, 2009, June 12, 2009, and August 6, 2010. Dr. Lee agreed that these sign-in sheets confirmed there were at least 75 patients seen on each day and that he would be balancing both scheduled appointments and unannounced visits.

Dr. Lee confirmed that he was so busy that he did not record which body part he was injecting each day. Hundreds of patient encounters would have only the date stamped, and he would scribble the initials of the areas injected.

Dr. Lee confirmed that, at times, his notes consisted of rows of stamped dates along the left side, with squiggles on the right side which was a symbol for "as above." Very little, if any, clinical information was documented in patient charts.

FINDINGS

The Committee finds that Dr. Lee engaged in sexual abuse of Patients A and C. The Committee also finds that, with regards to both Patients A and C, Dr. Lee engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional. The Committee finds the allegations concerning Patient B not proven.

The Committee's reasons and analysis for its findings are discussed below.

Credibility and Reliability Assessments

The Committee recognized the importance of carefully assessing the credibility of each witness and the reliability of their evidence. In cases of sexual abuse allegations, it is extremely important because typically the only witnesses are the complainant and the physician. Credibility of the witness speaks to his or her honesty. Reliability of a witness speaks to the accuracy of his or her evidence.

In assessing the credibility and reliability of each witness, the Committee considered the following factors:

1. Did the witness seem honest? Is there any reason why the witness would not be telling the truth?
2. Did the witness have an interest in the outcome of the case or any reason to give evidence that is more favorable to one side or the other?
3. Did the witness seem able to make accurate and complete observations about the events at issue?
4. Did the witness seem to have a good memory?
5. Did any inability or difficulty that the witness had in recalling events seem genuine or did it seem made up as an excuse to avoid answering questions?

6. Did the witness seem to be reporting what she saw or heard or simply putting together an account based on information obtained from other sources?
7. Did the witness' evidence seem reasonable and consistent as he or she gave it? Did the witnesses say something different on another occasion?
8. Do any inconsistencies in the witness' evidence make the main points of the testimony more or less believable or reliable? Is the inconsistency about something important, or something minor in detail? Does it seem like an honest mistake? Is it a deliberate lie? Is the inconsistency because the witness said something different on another occasion or because he or she failed to mention something? Is there any explanation for the inconsistency? If so, does the explanation makes sense?
9. What was the witness's demeanor like when he or she testified, recognizing that while demeanor is a relevant factor in a credibility assessment, demeanor alone is a notoriously unreliable predictor of the accuracy of evidence given by a witness.

(1) Dr. Lee

There is no obligation on Dr. Lee to disprove any of the allegations against him. The burden is on the College to prove the allegations on a balance of probabilities.

When giving his testimony, Dr. Lee was controlled and spoke very carefully. He acknowledged the chaos in his office and did not deny how busy he was and how poor his charting was. Dr. Lee was concise and direct in his denial of the facts alleged by each complainant in support of the allegations. The Committee will have more to say with respect to Dr. Lee's credibility below.

(2) Patient A

The Committee assessed Patient A's credibility and reliability and found that Patient A was a credible and reliable witness.

Patient A did not report Dr. Lee's misconduct to the College. She reported his behaviour to her family doctor, who then made a mandatory report to the College. Patient A was a

reluctant witness who feared that reporting these events could have a negative impact on her ability to obtain care for her condition. She testified that she was hesitant to report Dr. Lee because she felt she had everything to lose. Patient A was concerned that she would be denied the medical care she needed by “the brotherhood of doctors in Pickering,” as she feared that it would become general knowledge that she had reported Dr. Lee. She stated that she has a very unusual and easily identifiable name and that this concerned her. This made sense to the Committee. Nevertheless, when the College contacted her, Patient A testified that she felt it was important that she tell the truth and she felt compelled to follow through with the hearing.

Patient A was able to give an accurate and complete recollection of the events. She answered questions in a straightforward manner and was not emotional. The Committee found that her memory of the events was very good.

Dr. Lee alleged that Patient A became disgruntled when he tapered her narcotics, but she testified that she recognized that there were many side effects with the long-term use of opiates and understood that she needed to taper them. The Committee did not find that Patient A was disgruntled with Dr. Lee by the change in her prescription; rather, she accepted this was medically necessary.

Dr. Lee’s counsel suggested in his cross-examination of Patient A that she had a poor memory. Counsel relied upon a 2010 assessment that described Patient A as having a poor memory. The Committee was not persuaded that any memory problems Patient A may have impacted the reliability of her evidence. Patient A was quite clear that her memory problems related to difficulty retaining information she had read. There were no gaps in Patient A’s account of the facts in dispute.

In general, Patient A’s answers were succinct, to the point, and without embellishment.

The Committee believed Patient A’s evidence that she was charged cash for prescriptions and was not provided with a receipt. Although Dr. Lee denied this, the Committee was persuaded that this did occur, based on the assessment of her credibility and the reliability of her evidence.

The Committee believed Patient A's evidence that Dr. Lee showed her a gay magazine and made inappropriate comments with respect to her sex life. Patient A provided sufficient detail regarding these incidents to convince the Committee that they did occur.

The Committee also believed Patient A that Dr. Lee questioned her about other patients selling drugs on the street and requested that she photograph or videotape it.

The Committee also believed Patient A that Dr. Lee requested that she fill a prescription of Flamazine cream for him. This was an odd request, and Patient A was able to provide sufficient detail regarding the context in which the request was made and convinced the Committee that this did occur.

In summary, the Committee found Patient A to be credible and her testimony to be reliable. Dr. Lee's denial of the allegations regarding Patient A is irreconcilable with her evidence, which the Committee finds to be true. With respect to Patient A, the Committee finds that:

1. Dr. Lee engaged in sexual abuse of Patient A by asking her inappropriate and personal questions about her sex life and by showing and discussing a pornographic magazine with her. These were remarks and gestures of a sexual nature.
2. Dr. Lee engaged in conduct relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable and unprofessional by (i) making remarks and gestures of a sexual nature as described above; (ii) asking her to pay cash for prescriptions; (iii) asking her to fill a prescription for Flamazine for her; and (iv) asking her to video or photograph other patients.

(3) *Patient B*

Patient B has had a difficult life. She acknowledged that there was an assault charge against her that led to incarceration, that she had a problem with episodic drinking, and that she used marijuana on a long-term basis.

In looking at Patient B's evidence in isolation from the evidence of the other two women, as the Committee is required to do, the Committee found that Patient B's evidence was not sufficiently reliable to establish the allegations as they relate to Dr. Lee's interactions with her. The Committee found that Patient B tended to exaggerate and that her evidence was therefore often unreliable. Examples of the problems with her evidence include the following:

- (i) The assault charges: Patient B seemed to be careless with the truth when questioned about the assault charge against her spouse. In cross-examination, counsel put to her that she assaulted her husband with a specific object and she denied it. Later, however, when counsel showed her a note by a psychiatrist who had assessed her, which noted, "She tried to assault her ex-husband with a [specific object]," she admitted this was what she had reported to the psychiatrist at the time.
- (ii) The opioid risk forms: When Patient B filled out her opioid risk forms, she was not consistent when reporting her use of street drugs such as marijuana, mushrooms and cocaine.
- (iii) Psychiatric evaluations: Patient B was not forthright or consistent when asked about the psychiatric evaluations that were in her chart. She attempted to explain away comments made by her psychiatrist, stating that the psychiatrist did not tell the truth and "made up" these things to put in her chart. She also stated that other reports (psychiatrist, emergency room reports and police reports) were tainted and not truthful.
- (iv) Lesbian comments: Patient B testified in chief that, on at least three occasions, Dr. Lee made comments to her that women in their 40s sometime become lesbians, and that this was said in the context of her release from jail. In cross-examination it was pointed out to her that, in a handwritten note she made on a prior occasion, Patient B had indicated that these comments were made to her by Dr. Lee at least twice. Then, during an interview with the College investigator and prosecutor only a

few weeks before the hearing, Patient B reported that the comments had been made “at least ten times.”

These inconsistencies and exaggerations undermined the reliability of Patient B’s evidence. Taking her evidence in isolation, the Committee did not find that it had sufficient confidence in her description of events to make a finding with respect to the allegations. The Committee finds that the allegations with respect to Patient B were not proven.

(4) Patient C

The Committee found that Patient C was an honest and reliable witness.

Despite the suggestion made by counsel for Dr. Lee in cross-examination, the Committee found that Patient C’s evidence untainted by any suggested disgruntlement arising from the reduction of narcotics in her treatment by Dr. Lee. Patient C did not make a complaint to the College regarding Dr. Lee and does not appear to bear him any ill-will.

Patient C was able to make accurate and complete observations about the key events that she related. Patient C readily admitted that there were problems with her memory at times related to certain issues, but she had no problem remembering exceptional events.

Patient C was genuine and forthright in acknowledging situations where she did have memory loss. Her evidence in direct and cross-examination was consistent about the events in question.

The Committee found it reasonable that although Patient C had memory loss related to specific things, she was able to recall the distinct and unusual incidents, such as the inappropriate remarks that Dr. Lee made to her, or the manner in which Dr. Lee inappropriately touched her while administering an injection.

The Committee also noted that Patient C had very good recall for many things such as observations regarding patient flow and charting. Her observations regarding the way Dr. Lee ran his office were consistent with what Dr. Lee acknowledged in his own testimony.

The Committee found that the explanation Patient C provided for not previously reporting the specific words Dr. Lee used when speaking with her about her sex life truthful and plausible. Patient C explained that the College investigators did not push her to use the exact words, and that she felt very uncomfortable using them. When asked to be more specific at the hearing, she used these words because, as she testified, she felt it was important to do so in the hearing.

The Committee did not accept counsel for Dr. Lee's submission that Patient C was inconsistent in her description of the inappropriate touch because she used the words "grinding" and "rubbing" on different occasions when describing the incident. In the context of this event, there is no material difference in the use of these two terms. Patient C was clear that the incident happened from behind, that the physical touching was in a circular motion whether described as rubbing or touching and she believed it to be intentional. The Committee was struck by Patient C's candid comment that, "I am not naïve.", and her ability to call out the behavior when she said, "don't be doing that" to Dr. Lee. Patient C's testimony was consistent that she said these words to Dr Lee and that he pulled away immediately.

Patient C testified that she continued seeing Dr. Lee despite the incident of sexualized touching because it really didn't bother her that much. The Committee believes this to be the case, in particular given this witness' other life experiences as reflected in her medical files, and that she required ongoing treatment for her condition.

Patient C demonstrated a clear recollection of Dr. Lee's chaotic office environment.

The Committee found Patient C's testimony to be dispassionate, calm, mature, and honest. Patient C testified, "I don't want to be here," but "I tell the truth."

Patient C also testified that she felt Dr. Lee was a compassionate, sympathetic, and caring doctor. She candidly admitted that she did not feel threatened by Dr. Lee and thought he was a good doctor.

The Committee found that Patient C's evidence was clear, cogent, and convincing.

Dr. Lee categorically denied that he made the alleged inappropriate remarks to Patient C. Given the strength of Patient C's evidence, however, the Committee did not believe his denial. There was no documentation to justify any clinical reason for questioning Patient C about her sex life. In any event, even if there was, it would be inappropriate to use the language that Patient C testified Dr. Lee used in communicating with her.

With respect to the allegation of sexualized touching, Dr. Lee's explanation and demonstration with respect to the manner in which he routinely gives trigger point injections did not preclude the possibility that he engaged in physical contact with Patient C in the manner which she described in her testimony, which the Committee accepted. The Committee did not find relevant whether Dr. Lee routinely wears a lab coat, or has keys or a cell phone in his pocket. If the suggestion was that Patient C was mistaken with respect to what she felt (a suggestion which was never put to her directly), this is inconsistent with Patient C's evidence that she was certain of what she felt and that she believed Dr. Lee's touching of her in this manner was intentional. The Committee did also not find relevant the variation in their respective heights and the distance he said he routinely stands away from patients when giving an injection, as that did not account for where he stood at this time on this day.

Dr. Lee alleged that Patient C became disgruntled when he tapered her off narcotics. The Committee, however, did not find any evidence that this was the case or that any such feelings had any impact on her regard for him or the veracity of Patient C's evidence. Patient C acknowledged increased pain when the narcotics were tapered, but she understood the medical reason why this had to be done. Furthermore, Patient C continued seeing Dr. Lee for treatment until the trigger point injections became ineffective, and then continued care with her family doctor.

The Committee believed Patient C. Dr. Lee's denial of inappropriate remarks or contact is simply irreconcilable with her evidence. As a result, the Committee does not believe him.

The Committee finds that:

1. Dr. Lee sexually abused Patient C in that he inappropriately rubbed his groin against her right hip area while administering a trigger point injection. This was contact of a sexual nature.
2. Dr. Lee sexually abused Patient C by using sexually explicit and crude language when asking her personal questions about her sex life. These were remarks of a sexual nature.
3. Further, Dr. Lee's line of questioning with respect to Patient C's personal sex life, and his choice of words when asking these questions would reasonably be regarded by members of the profession as disgraceful, dishonorable or unprofessional.

In summary, the Committee found that Dr. Lee committed an act of professional misconduct in that he engaged in the sexual abuse of a patient by touching of a sexual nature and making remarks of a sexual nature. He also engaged in conduct relevant to the practice of medicine, that having regard to all the circumstances would be reasonably regarded by members as disgraceful dishonorable or unprofessional.

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

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Lee, 2020 ONCPSD 21

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

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

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. MARTIN M S LEE

PANEL MEMBERS:

**DR. B. LENT (CHAIR)
DR. P. ZITER
MR. P. GIROUX
DR. S.M. YOUNG**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS M. KELLYTHORNE

COUNSEL FOR DR. LEE:

**MR. M. VENEZIANO
MR. P. VEEL
MR. A. KANJI**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. JESSE HARPER

Hearing Date: March 17, 2020
Decision Date: March 17, 2020
Release of Reasons Date: May 1, 2020

PUBLICATION BAN

PENALTY DECISION AND REASONS FOR DECISION

On January 18, 2017, the Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) found that Dr. Martin M S Lee committed an act of professional misconduct in that he engaged in the sexual abuse of patients and engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

In its original decision and reasons dated November 2, 2017, the Committee made a penalty order that directed the Registrar to revoke Dr. Lee’s certificate of registration effective immediately. Dr. Lee appealed the Committee’s decisions dated January 18, 2017 and November 2, 2017. By reasons dated July 19, 2019, the Divisional Court ordered, amongst other things, that the appeal from the Committee’s liability decision was dismissed, and that the appeal from the Committee’s penalty decision was allowed. The Divisional Court ordered that a panel of the same members of the Discipline Committee who heard the original hearing re-hear and decide the issue of penalty, with certain directions.

A subsequent penalty hearing was held on March 17, 2020. Following that hearing, the Committee released a written order dated March 18, 2020, setting out its decision on penalty and costs, with written reasons to follow. These are those reasons.

PROCEDURAL NOTE

The hearing on March 17, 2020 proceeded by way of teleconference, on the consent of the parties. The Committee made an order under subsection 45(2)(d) of the Code that the hearing on March 17, 2020 was to proceed via teleconference, to the exclusion of the public. The Committee was satisfied,

given the COVID-19 pandemic, that the safety of a person may be jeopardized, if the parties, their counsel and the panel were required to travel to the College and hold this hearing in person, potentially in the presence of members of the public. The transcript of these proceedings will be available to the public in the normal course (subject to the terms of the publication ban that applies to this matter).

THE PROFESSIONAL MISCONDUCT

In its decision and reasons dated January 18, 2017, the Committee found that Dr. Lee engaged in sexual abuse of two patients and that he engaged in conduct relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

The Committee made its findings based on the evidence of two patients, Patients A and C, whom Dr. Lee treated for pain and fibromyalgia between 2008 and 2012.

These reasons will not reiterate the findings on professional misconduct and the reasons for those findings, but to summarize, the Committee made the following findings of professional misconduct in its decision dated January 18, 2017:

1. Dr. Lee engaged in sexual abuse of Patient A by asking inappropriate and personal questions about her sex life and by showing her and discussing with her a pornographic magazine. These were remarks and gestures of a sexual nature.
2. Dr. Lee engaged in conduct relevant to the practice of medicine that having regard to all circumstances would reasonably be regarded by members as disgraceful, dishonorable or unprofessional including: making remarks and gestures of a sexual nature to Patient A; asking

Patient A to pay cash for prescriptions; asking Patient A to fill a prescription for Flamazine for him; asking Patient A to videotape or photograph another patient, who was allegedly selling prescription drugs on the street;

3. Dr. Lee sexually abused Patient C by rubbing his groin against her right hip area while administering a trigger point injection. This was touching of a sexual nature.
4. Dr. Lee engaged in sexual abuse of Patient C by using sexually explicit and crude language when asking her personal questions about her sex life. These were remarks of a sexual nature.
5. Dr. Lee engaged in conduct relevant to the practice of medicine that having regard to all circumstances would reasonably be regarded by members as disgraceful, dishonorable or unprofessional by asking the line of questions with respect to Patient C's personal sex life and by his choice of words when asking these questions.

AGREED STATEMENT OF FACTS ON PENALTY

The following facts were set out in an Agreed Statement of Facts on Penalty, which was filed as an exhibit at the hearing on March 17, 2020, and presented to the Committee.

Prior History

1. Dr. Martin M S Lee ("Dr. Lee") was the subject of a decision by the Inquiries, Complaints, and Reports Committee ("ICRC") on April 22, 2015, which is attached at Tab 1 to the Agreed Statement of Facts on Penalty. The ICRC's

decision was in relation to a public complaint regarding Dr. Lee's treatment of the complainant's late husband.

2. In its decision, the ICRC accepted an undertaking from Dr. Lee by which he would cease to provide interventional pain medication, nerve blocks and trigger point injections, and would relinquish his prescribing privileges with respect to narcotic drugs, narcotic prescriptions and all other monitored drugs. The undertaking also included a clinical supervision and reassessment component, and required Dr. Lee to successfully complete an educational program regarding doctor-patient boundaries. Dr. Lee's undertaking, dated February 4, 2015, and accepted by the ICRC in its decision of April 22, 2015, is attached at Tab 2 to the Agreed Statement of Facts on Penalty.

3. The ICRC required Dr. Lee to attend at the College to be cautioned in person with respect to his failure to maintain appropriate boundaries in his care of the patient, having acknowledged that the patient ran errands for him and gave him gifts.

4. No concerns regarding Dr. Lee's compliance with the undertaking at Tab 2 to the Agreed Statement of Facts on Penalty have been identified. Dr. Lee has completed the clinical supervision component of the undertaking. In her final report to the College, the clinical supervisor stated the opinion that Dr. Lee's medical record-keeping now met the standard of practice. The report of the reassessment of Dr. Lee's practice, dated November 10, 2017, is attached at Tab 3 to the Agreed Statement of Facts on Penalty. The assessor reviewed 25 patient charts and interviewed Dr. Lee, finding that care provided by Dr. Lee met the standard of practice of the profession.

Completion of Boundaries Education

5. As required by his February 2015 undertaking, Dr. Lee successfully completed an educational program regarding doctor-patient boundaries offered by Western University on March 27 and 28, 2015. Dr. Lee has not been the subject of any complaints or reports to the College regarding conduct crossing doctor-patient boundaries that was alleged to have taken place after he completed this program.

Interim Order

6. The ICRC made an interim order in this matter on October 14, 2015, under what was then section 37 of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*. The interim order is attached at Tab 4 to the Agreed Statement of Facts on Penalty.

7. Among other things, the interim order required Dr. Lee not to engage in any professional encounters with female patients of any age unless the patient encounter took place in the presence of a monitor who was a female member of a regulated health profession who is acceptable to the College (the "Practice Monitor"). Dr. Lee was also required to ensure that the Practice Monitor kept a log of all of the female patients with whom Dr. Lee had a professional encounter in her presence, and that she initialed the corresponding entry of each encounter in the patient's record to indicate that she was present at all times during the professional encounter.

8. Dr. Lee's Practice Monitor delivered reports to the College as required by her undertaking under the terms of the interim order, and College compliance monitors made unannounced visits to Dr. Lee's office as permitted by the order.

9. Five instances, involving four patients, were identified between January and June 2016 in which Dr. Lee submitted a claim to the Ontario Health

Insurance Plan in respect of a professional encounter with a female patient that was not noted in the patient log. In four of the five instances, the Practice Monitor initialled the entry in the patient's record corresponding to the encounter. In the fifth instance, the entry was not initialled. Dr. Lee's Practice Monitor was unable to explain how this occurred, and speculated she may have forgotten to fill out the log in those instances. She stated that she had been in Dr. Lee's presence for each professional encounter with a female patient.

10. The College's compliance monitor spoke to three of the four patients. One patient could not recall if the practice monitor was present every time she saw Dr. Lee. The other two patients advised that the practice monitor was present at every appointment, including the patient whose record bore no initial from the practice monitor for one encounter. The fourth patient could not be reached.

11. Other than what is described above in paragraphs 9 and 10, no concerns regarding Dr. Lee's compliance with the interim order were identified by either the Practice Monitor or the College's compliance monitor.

Dr. Lee's Current Status

12. The panel originally heard evidence and submissions on penalty in this matter on May 2, 2017. On November 2, 2017, the panel released its penalty decision and reasons for decision by which, among other things, the panel revoked Dr. Lee's certificate of registration effective immediately. Dr. Lee appealed the findings against him and the panel's penalty decision. However, the revocation of his certificate of registration was not stayed during the appeal process and remained in effect throughout his appeal.

13. Subsequently, in a decision released on July 19, 2019, the Divisional Court allowed Dr. Lee's appeal as to penalty and remitted the question of penalty to the

panel.

14. Dr. Lee has not practised medicine since June 2017. He acknowledges that as a result he must follow the College's Policy on *Ensuring Competence: Changing Scope of Practice and/or Re-entering Practice*, which is attached at Tab 5 to the Agreed Statement of Facts on Penalty.

OTHER EVIDENCE REGARDING PENALTY

College Counsel submitted as evidence a witness impact statement from Patient A. In that impact statement, Patient A describes how her experience with Dr. Lee has made it difficult for her to trust any physicians. She describes how she felt uncomfortable with his actions and worried that he would no longer treat her health problems, leaving her without a doctor. While the investigation was ongoing, she was fearful that other doctors would see her as a troublemaker and not want to treat her. The long-term impact of this experience has been substantial, as evidenced from the following portion of the impact statement:

"Every time I think that I can begin to move forward and try to leave this horrible experience behind me, it once again gets trudging up, and I have to keep reliving the experience, explaining the same things over and over again...It's exhausting, physically and emotionally, to always be on guard in the interest of protecting yourself."

SUBMISSIONS ON PENALTY

Counsel for the College and counsel for Dr. Lee made a joint submission as to an appropriate penalty and costs order, which would include: directing the Registrar to impose terms, conditions and limitations on Dr. Lee's Certificate of Registration, including a requirement to have a Practice Monitor and keep a

patient log for all patients; being required to notify the College of practice locations; posting a sign with agreed-upon text regarding the restrictions on Dr. Lee's practice in each of his practice locations; notifying patients of the restrictions on Dr. Lee's practice; permitting the College to monitor compliance with the restrictions; completing specified professional education; being responsible for the cost of implementation of the order; attending for a reprimand; and providing a letter of credit or other security in the amount of \$16,060.00 for funding under the program required under s. 85.7 of the Code. Further, counsel jointly proposed that Dr. Lee pay costs in the amount of \$20,500.00.

Counsel for Dr. Lee submitted that the proposed penalty was consistent with previous cases and would allow for Dr. Lee's "safe and reasonable re-integration into the practice of medicine". Counsel also emphasized that the imposition of a practice monitor for all patient encounters would ensure the protection of the public.

PENALTY AND REASONS FOR PENALTY

The Committee recognizes that, although it has discretion to accept or reject a joint submission on penalty, the law provides that the Committee should not depart from a joint submission unless the proposed penalty is so disproportionate to the finding of misconduct that it would bring the administration of justice into disrepute, or is otherwise contrary to the public interest (*R. v. Anthony-Cook*, 2016 SCC 43).

Penalty principles

The Committee recognizes the usual, well-recognized guiding principles which apply when determining the appropriate penalty in disciplinary proceedings, with

protection of the public being the foremost consideration. The penalty should also denounce wrongful conduct, serve as a specific deterrent to the member and a general deterrent to the membership as a whole, assist in maintaining public confidence in the integrity of the profession and in the College's ability to regulate the profession effectively in the public interest and, where possible, address the rehabilitative needs of the member. Due consideration needs also to be given to aggravating and mitigating factors.

Aggravating Factors

The Committee identified several aggravating factors in this case. Dr. Lee was found to have sexually abused two female patients over an extended period of time. His misconduct involved multiple violations of appropriate boundaries in his relationships with these two patients. Specifically, he made remarks of a sexual nature to both patients; he showed a pornographic magazine to Patient A; he asked Patient A to videotape or photograph another patient who was allegedly selling prescriptions on the street; he asked Patient A to pay cash for a prescription and to fill a prescription for him; and he rubbed his groin against Patient C in a grinding motion, while performing a medical procedure.

These patients came to see Dr. Lee for help with their chronic pain and were dependent on him for his advice and treatment for their health issues. Not only did he put his own needs above those of his patients, he did so in the context of providing clinical care. Patient A indicated that Dr. Lee's behaviour made her uncomfortable, and she would respond to his remarks with awkward silence or nod and back away. She didn't want to complain or participate in the disciplinary proceeding because she was worried that other doctors would know that she had complained and would not want to see her. Patient C indicated that she felt uncomfortable with Dr. Lee's sexual discussions.

Mitigating Factors

In considering mitigating factors, the Committee recognizes that Dr. Lee has no previous Discipline history. In over 20 years of practice, Dr. Lee had no prior findings of misconduct.

There was a complaint with respect to boundary violations of a non-sexual nature, which resulted in a caution by the ICRC and an order that Dr. Lee take the College boundaries course, which he completed. The ICRC required Dr. Lee to complete a period of clinical supervision followed by a re-assessment. The clinical supervisor reported that Dr. Lee's medical record-keeping met the standard of practice, and no concerns were identified with respect to compliance with the clinical supervision. In the re-assessment report, it was noted that Dr. Lee's care met the standard of practice. This demonstrates that Dr. Lee is governable and remediable. In addition, there have been no further complaints since Dr. Lee began practicing under the terms of the Undertaking that the ICRC accepted from him in 2015.

Counsel for Dr. Lee provided multiple letters of support from Dr. Lee's colleagues and from other patients. While the Committee appreciates that these individuals hold Dr. Lee in high regard, little weight was given to these letters, as the Committee recognizes that the letter writers may have lacked complete knowledge of the incidents being considered. Further, evidence of a physician's good character and reputation ought to be accorded little weight in circumstances in which there have been findings of sexual abuse. Such conduct occurs primarily in private and is often inconsistent with the external persona of the abuser (*CPSO v. Margaliot*, 2016 ONCPSD 53). The Committee notes that even Patient C described Dr. Lee as a compassionate, sympathetic and caring doctor.

Prior Cases

The Committee recognizes that its decision is guided by its previous decisions, although not bound by them. Each case will have unique facts or circumstances, which the Committee must consider in determining the just and appropriate penalty.

College Counsel submitted four previous cases for the Committee's consideration.

Ontario (College of Physicians and Surgeons of Ontario) v. Dao, 2018 ONCPSD 56 (CanLII), concerned Dr. Dao, whose medical practice focussed on chronic pain. In 2018, he pled no contest to allegations that he committed sexual abuse and disgraceful, dishonourable or unprofessional conduct for making inappropriate comments to one patient about S&M and a "rub and tug". There were no other instances of misconduct. While there was a clear power imbalance between Dr. Dao and his patient, the Committee identified various mitigating factors: Dr. Dao expressed remorse, enrolled in the PROBE Ethics and Boundaries course, arranged one-to-one coaching, and pleaded no contest to the allegations. The Committee ordered a three-month suspension, as well as completion of the PROBE course, clinical monitoring, posting of signage, and costs. The Dao case differs from Dr. Lee's situation, as it involved only one patient and inappropriate sexual remarks (rather than physical sexual acts).

Ontario (College of Physicians and Surgeons of Ontario) v. Dubins, 2016 ONCPSD 34 involved Dr. Dubins, a family physician who used hypnotherapy to assist his patients with smoking cessation. The Committee found he had failed to maintain the standard of practice and had engaged in behaviour which would reasonably be considered disgraceful, dishonourable or unprofessional. Dr. Dubins was found to have used graphic and offensive imagery and asked the patient to unbutton and lower his pants during hypnotherapy. Because the ICRC had

previously cautioned Dr. Dubins for similar behaviour, the Discipline Committee viewed Dr. Dubins as showing disregard for the authority of the College, and thus being ungovernable. Dr. Dubins resigned from the College and agreed not to re-apply. The Committee ordered a reprimand and costs, noting that his certificate would have been revoked had he not resigned.

Ontario (College of Physicians and Surgeons of Ontario) v. Yaghini, 2017 ONCPSD 29 (CanLII) involved Dr. Yaghini, a family physician found to have engaged in sexual abuse of a patient, and in behaviour that would reasonably be considered disgraceful, dishonourable or unprofessional. On one occasion, Dr. Yaghini told the patient that she was pretty, and on a subsequent visit, he kissed her on the cheek and tried to kiss her on the lips, and told her she reminded him of a previous girlfriend. In that case, the College submitted that revocation was an appropriate penalty, while counsel for Dr. Yaghini submitted that a six-month suspension was appropriate. In its reasons, the Committee noted that Dr. Yaghini had breached the trust expected between an adult and a child, as well as the trust expected in the doctor-patient relationship. On the other hand, the behaviour in question was not as intrusive as behaviour seen in other cases, and Dr. Yaghini had shown some insight. A forensic psychiatrist suggested the risk of recurrence was low. The Committee ordered a nine-month suspension, a letter of credit for funding of future therapy for the patient, and costs. This case differs from Dr. Lee's situation in that it involved only one patient and less egregious sexual abuse, whereas Dr. Lee abused two patients by violating boundaries in multiple ways.

The Committee also considered *Ontario (College of Physicians and Surgeons of Ontario) v. Phipps*, 2019 ONCPSD 45. Dr. Phipps was a family physician who was found to have sexually abused multiple patients. His misconduct included showing naked photos of himself to 11 patients during their clinical visits, becoming sexually aroused during the clinical visits of two patients, making

remarks of a sexual nature to four patients, and touching one patient with his erect penis. After consideration of the evidence and of the aggravating and mitigating factors, the Committee ordered a 14-month suspension, clinical supervision, ongoing psychiatric care, a letter of credit for funding of the complainants' therapy, a reprimand and costs. This case differs from Dr. Lee's in that Dr. Phipps' behaviour was much more egregious, involved more patients, and consisted of several elements of sexual misconduct.

Counsel for the College also reviewed the reasons and guidance of the Divisional Court in the appeal in this matter. Specifically, the Divisional Court advised that:

- (a) the amendments to the *Code* as a result of the *Protecting Patients Act, 2017* do not apply;
- (b) the Committee should be guided by the decision of the Court of Appeal in *Peirovy*;
- (c) revocation is not a fit penalty;
- (d) in deciding what is a fit penalty, the Committee shall take into consideration:
 - (i) the criteria of: public protection, maintaining the reputation and integrity of the profession and public confidence in the College's ability to regulate the profession in the public interest; specific deterrence of the member; general deterrence of the profession, opportunity for rehabilitation of the member;
 - (ii) how the evidence with respect to each individual criterion is balanced with all of the other criteria;

(iii) the principle that the penalty must be proportionate to the nature of the conduct and the impact on the victim(s);

(iv) the principle of consistency in penalty.

The Committee has taken into account the Divisional Court's reasons and directions in coming to this decision.

Counsel for Dr. Lee did not refer to any cases in submissions, but did also include the additional case of *College of Physicians and Surgeons v. Maharajh*, 2013 ONCPSD 37 in its brief of authorities. In this case, Dr. Maharajh was found to have sexually assaulted a single patient by placing her nipple in his mouth. The Committee ordered a suspension of 8 months, terms conditions and restrictions on Dr. Maharajh's certificate of registration, a reprimand, and reimbursement for funding for therapy of the patients. This case was less egregious than Dr. Lee's in that it was a single incident with a single patient.

In its review of these prior cases, the Committee is of the view that Dr. Lee's misconduct is less egregious than that of Dr. Phipps, but more egregious than that of Drs. Dao, Yaghini, and Maharajh. Dr. Lee was found to have sexually abused two patients, on multiple occasions, involving several different boundary violations. In this case, the Committee would have considered a suspension of a minimum of 12 months to be proportionate and consistent with these other cases. This would ensure protection of the public and demonstrate specific and general deterrence.

However, the circumstances with respect to the appropriate penalty in this case are unique. Dr. Lee's certificate of registration was revoked following the Committee's initial penalty order in November 2017, and Dr. Lee has not

practiced medicine since June 2017. The Divisional Court has now stated that that revocation was not reasonable. Dr. Lee's lengthy period outside of clinical practice means that before he can return to practice, he will be subject to the College's Policy on *Ensuring Competence: Changing Scope of Practice and/or Re-entering Practice*, which requires that he notify the College of his interest in returning to practice, undergo a needs assessment, and work with a Medical Advisor at the College, to determine the appropriate educational requirements and/or clinical supervision. Accordingly, while a suspension would have been warranted for Dr. Lee's actions, Dr. Lee has already been out of practice involuntarily for a significant period of time, and no further suspension is sought or warranted.

The Committee is further reassured because Dr. Lee's 2015 undertaking with the College, prohibiting him from prescribing narcotics or other monitored drugs and from engaging in interventional pain modalities, will remain in force.

The Committee notes that the College's and the profession's denunciation of Dr. Lee's behaviour will be expressed by the reprimand. The reprimand will act as a specific deterrent to Dr. Lee against the repetition of his previous behaviour. The reprimand also reinforces for the profession that the College expects its members to maintain respectful, safe boundaries in their clinical encounters with patients, and thus addresses general deterrence. It helps to maintain public confidence that the profession is able to regulate physicians' behaviour effectively.

The requirement to have clinical supervision is consistent with what the Committee ordered in the *Yaghini* and *Phipps* cases. Although the option of gender-based restrictions was available to the Committee in Dr. Lee's case, as the Divisional Court highlighted in its reasons, the Committee believes that it is

prudent to require supervision with all patients, regardless of gender, in order to ensure public protection.

The Committee is satisfied that Dr. Lee is remediable, in that there have been no additional complaints since the ICRC considered a previous complaint about him in 2015, and his re-assessment after the required period of clinical supervision was positive. On the other hand, because Dr. Lee has had no education on the specific misconduct with Patients A and C, the Committee requires that Dr. Lee complete the PROBE Ethics and Boundaries course. This will enhance public protection, contribute to Dr. Lee's rehabilitation, and augment public confidence in the profession's ability to govern physicians effectively.

The Committee carefully considered the awarding of therapy costs as required under section 85.7 of the Code. In its initial penalty order, the Committee required Dr. Lee to provide a letter of credit for both Patient A, who indicated that she was affected by the abuse, and Patient C, who indicated that she was not bothered very much by the experience of Dr. Lee's sexual abuse and did not feel the need to pursue therapy to deal with this experience. The Committee remains concerned that, at some future date, some individuals might want to reflect, with a therapist, on their experiences of sexual abuse in the doctor-patient relationship, even though they initially minimized the impact of the abuse. That said, the Committee accepts the guidance of the Divisional Court, which overturned the Committee's initial decision to require funding for therapy for Patient C, as it was "not grounded in any evidence, is speculative, and therefore is not within a range of reasonable outcomes".

The Committee agrees that this is an appropriate case in which to order Dr. Lee to pay costs, based on the length of both the liability hearing (at the tariff rate applicable then) and the post-appellate penalty hearing, but not including the time spent at the original penalty hearing.

Given the ongoing COVID-19 pandemic, the Committee believes it is reasonable to give Dr. Lee 75 days both to reimburse the College for the cost of funding therapy for one patient in the amount of \$16,060.00 and to pay costs in the amount of \$20,500.00.

CONCLUSION

The Committee has taken into account the Divisional Court's reasons and directions in coming to this decision. Based on its careful consideration of the submissions of counsel for the College and for Dr. Lee, its review of prior cases, and its attention to the reasons and guidance of the Divisional Court, the Committee is satisfied that the jointly proposed penalty and costs are appropriate in this particular case.

ORDER

The Committee issued a written order dated March 18, 2020. In that order, the Committee ordered and directed on the matter of penalty and costs that:

1. **THE DISCIPLINE COMMITTEE DIRECTS** the Registrar to place the following terms, conditions and limitations on Dr. Lee's certificate of registration, effective immediately:

Practice Monitor and Patient Log

- a. Dr. Lee shall not engage in any professional encounters, in person or otherwise ("Professional Encounter(s)") with patients of any age in any jurisdiction, unless the Professional Encounter takes place in the continuous presence of and under the continuous observation

of a monitor who is a regulated health professional acceptable to the College (the “Practice Monitor(s)”). Among other things, Dr. Lee may not be alone with any patient for any length of time during any Professional Encounter.

- b. At all times, Dr. Lee shall ensure that a Practice Monitor shall:
 - i. Remain present throughout all Professional Encounters with all patients, even if another person is accompanying the patient;
 - ii. Carefully observe all of Dr. Lee’s Professional Encounters with patients, including, but not limited to, any physical examinations, with a continuously unobstructed view of any such examination;
 - iii. Refrain from performing other functions, except those required by the Practice Monitor’s undertaking attached as Appendix “A” (the “Practice Monitor’s Undertaking”), while observing Dr. Lee in all his Professional Encounters with patients;
 - iv. Keep a log of all Professional Encounters with patients in the form attached as Appendix “B” (the “Log”);
 - v. Initial the corresponding entry in the record of each patient noted in the Log to confirm that the Practice Monitor was in Dr. Lee’s presence at all times during the Professional Encounter;

- vi. Submit the original Log to the College on a monthly basis;
and
 - vii. Provide reports (as described in the Practice Monitor's Undertaking) to the College on at least a monthly basis.
- c. Dr. Lee shall maintain a copy of the Log, and make it available to the College on request.

Notification of Practice Locations

- d. Dr. Lee shall inform the College of each and every location where he practises or has privileges in any jurisdiction, including, but not limited to, hospital(s), clinic(s) and office(s) ("Practice Location(s)"), within five (5) days of this Order. Going forward, he shall inform the College of any new Practice Location within five (5) days of commencing practice there, and shall inform the College if he ceases to practise at any Practice Location within five (5) days of ceasing practice there.

Posting a Sign and Translations

- e. Dr. Lee shall post a sign in a clearly visible and secure location in each waiting room, examination room, and consulting room, in all of his Practice Locations, in the form attached as Appendix "C" that states: "Dr. Martin Lee must be in the continuous presence of and under the continuous observation of a practice monitor acceptable to the College of Physicians and Surgeons of Ontario in any professional encounter with a patient, in-person or otherwise. Dr. Lee must not be alone with any patient during any professional

encounter. Further information may be found on the College website at www.cpsso.on.ca .”

- f. Dr. Lee shall post a certified translation, in any language(s) in which he provide(s) services, of the sign described in (e) above, in a clearly visible and secure location in each waiting room, examination room, and consulting room, in all of his Practice Locations, in the form attached as Appendix “C”.
- g. Dr. Lee shall provide any certified translation(s) required by (f) above to the College within thirty (30) days of the date of this Order.

Notifying Patients

- h. Dr. Lee shall ensure that each patient with whom he has a Professional Encounter is directly notified before the Professional Encounter of the restriction described in (1a), above, in the presence of his Practice Monitor.

Monitoring of Compliance

- i. Dr. Lee shall consent to the College making appropriate enquiries of the Ontario Health Insurance Plan (in the form attached hereto as Appendix “D”) and/or any person who or institution that may have relevant information in order for the College to monitor Dr. Lee’s compliance with the terms of this Order, and Dr. Lee shall promptly sign any consents requested by the College to obtain such information from these persons or institutions.
- j. Dr. Lee shall submit to, and not interfere with, unannounced

inspections of his Practice Locations and patient charts by the College and to any other activity the College deems necessary, in order to monitor Dr. Lee's compliance with the terms of this Order.

- k. Dr. Lee shall consent to the College providing any information to the Practice Monitor that the College deems necessary or desirable in order to assist the Practice Monitor in fulfilling their Undertaking and in order to monitor Dr. Lee's compliance with the terms of this Order.
- l. Dr. Lee shall consent to any Practice Monitor disclosing to the College, and to any other Practice Monitor, any information relevant to this Order, relevant to the terms of the Practice Monitor's Undertaking and/or relevant for the purposes of monitoring Dr. Lee's compliance with this Order.
- m. Dr. Lee shall consent to the College providing the Order to any Chief(s) of Staff, or a colleague with similar responsibilities, at any Practice Location where he practises or has privileges ("Chief(s) of Staff"), and to providing said Chief(s) of Staff with any information the College has that led to this Order and/or any information arising from the monitoring of his compliance with this Order.

Professional Education

- n. Dr. Lee shall participate in the PROBE Ethics & Boundaries Program offered by the Centre for Personalized Education for Professionals, by receiving a passing evaluation or grade, without any condition or qualification. Dr. Lee shall complete the PROBE program within

eight (8) months of the date of this Order, and shall provide proof to the College of his completion, including proof of registration and attendance and participant assessment reports, within one (1) month of completion.

Cost of Implementation

- o. Dr. Lee shall be responsible for any and all costs associated with implementing the terms of this Order.
- 2. **THE DISCIPLINE COMMITTEE ORDERS** Dr. Lee to attend before the panel to be reprimanded.
- 3. **THE DISCIPLINE COMMITTEE ORDERS** Dr. Lee to reimburse the College for funding under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, within seventy-five (75) days of the date of this Order in the amount of \$16,060.00.
- 4. **THE DISCIPLINE COMMITTEE ORDERS** Dr. Lee to pay costs to the College in the amount of \$20,500.00, within seventy-five (75) days of the date of this Order.

APPENDIX "A"**TO THE ORDER OF THE DISCIPLINE COMMITTEE DATED MARCH 17, 2020
AND RELEASED MARCH 18, 2020****re: DR. MARTIN M S LEE****("Dr. Lee")****UNDERTAKING OF _____,****PRACTICE MONITOR FOR DR. LEE**

1. I have read the Order of the Discipline Committee dated March 17, 2020 and released March 18, 2020 (the "2020 Order"). I am aware of the College's duty to protect the public. I have asked any questions I may have about the Order imposing restrictions on Dr. Lee's certificate of registration and my role as Dr. Lee's Practice Monitor and have received answers to my satisfaction.
2. I acknowledge that I have reviewed, or will review as soon as practicable, the materials regarding Dr. Lee provided to me by the College, as well as the College's Guidelines for College-Directed Practice Monitoring.
3. I am twenty-one (21) years of age or older.
4. I am a regulated health professional. I am a registered member, and have been for at least five (5) years, of the College of _____ of Ontario (Registration # _____).

5. Commencing from the date I sign this undertaking with the College, I undertake to act as a Practice Monitor for Dr. Lee ("Practice Monitor").
6. I undertake to be in Dr. Lee's presence at all times when he engages in any professional encounter, in person or otherwise ("Professional Encounter(s))", with any patient. I further understand that Dr. Lee may not begin or continue any Professional Encounter with any patient without my presence even if another person is accompanying the patient, and that Dr. Lee must ensure that each patient with whom he has a Professional Encounter is directly notified in my presence of this restriction, before the Professional Encounter.
7. I undertake not only to be present, but to observe carefully all of Dr. Lee's Professional Encounters with patients, including but not limited to physical examinations. I undertake that I will maintain a clear and unobstructed view of the entire encounter, including but not limited to any physical examinations.
8. I undertake that I shall not perform any other functions, except those required of me by this Undertaking, while observing each of Dr. Lee's Professional Encounters with patients.
9. I undertake to keep a patient log in the form attached to the Order as Appendix "B" of all the patients that Dr. Lee has a Professional Encounter with in my presence (the "Log").

10. I undertake to initial and date the corresponding entry in the record of each patient noted in the Log to confirm that I was in Dr. Lee's presence at all times during the related Professional Encounter.
11. I undertake to submit the **original** Log and a written report to the College on the first day of each and every month. I undertake to keep and secure a copy of the original Log. The report will indicate my compliance with my undertaking, Dr. Lee's compliance with the Order, and any other information I believe will assist the College in its monitoring of Dr. Lee.
12. If I believe that Dr. Lee's behaviour and/or actions are improper in any way, I will immediately notify the College.
13. If any patient expresses any concern regarding improper behaviour or actions by Dr. Lee, I will immediately notify the College.
14. I confirm that Dr. Lee has consented to my disclosure to the College, and to any other Practice Monitors, of all information relevant to the Order, relevant to the provisions of my undertaking, relevant for the purposes of monitoring Dr. Lee's compliance with the Order and/or otherwise necessary to fulfill the provisions of my undertaking.
15. I undertake to inform the College in writing within twenty-four (24) hours if there is any change in my status or to the terms of my certificate of registration at the College of _____ Ontario.

16. I acknowledge that all information that I become aware of in the course of my duties as Dr. Lee's Practice Monitor is confidential information and that I am prohibited, both during and after the period of monitoring, from communicating it in any form and by any means except in the limited circumstances set out in section 36(1) of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the "RHPA").
17. I undertake to notify the College and Dr. Lee in advance wherever possible, but in any case immediately following, any communication of information under section 36(1) of the RHPA.
18. I undertake to inform the College immediately, in writing, if I am unwilling or unable to fulfill any of the provisions of my undertaking.

Dated at _____ this _____ day of _____, 2020.

Monitor (*print name*)

Monitor (*signature*)

Witness (*print name*)

Witness (*signature*)

[illegible]

APPENDIX "C"
TO THE ORDER OF THE DISCIPLINE COMMITTEE DATED MARCH 17, 2020
AND RELEASED MARCH 18, 2020
re: DR. MARTIN M S LEE
("Dr. Lee")

IMPORTANT NOTICE

Dr. Martin Lee must be in the continuous presence of and under the continuous observation of a practice monitor acceptable to the College of Physicians and Surgeons of Ontario in any professional encounter with a patient, in-person or otherwise.

Dr. Lee must not be alone with any patient during any professional encounter.

Further information may be found on the College website at www.cpsso.on.ca

APPENDIX "D"
TO THE ORDER OF THE DISCIPLINE COMMITTEE DATED MARCH 17, 2020
AND RELEASED MARCH 18, 2020
re: DR. MARTIN M S LEE
("Dr. Lee")

CONSENT AND DIRECTION
FOR THE RELEASE OF INFORMATION FROM THE
ONTARIO HEALTH INSURANCE PLAN

**CONSENT AND DIRECTION
FOR THE RELEASE OF INFORMATION FROM THE
ONTARIO HEALTH INSURANCE PLAN**

I consent to the release of billing information by the Ontario Health Insurance Plan to the COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO for:

1. Name of Physician: DR. MARTIN M S LEE
2. OHIP billing number: _____
3. CPSO #: 61978
4. Date or Time Period: 2020 onward

Dated at _____, this ____ day of _____, 2020

DR. MARTIN M S LEE

Witness (print name)

Witness (Signature)

TEXT of PUBLIC REPRIMAND
Delivered September 4, 2020
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. MMS LEE

Dr. Lee,

You stand before us today because the Committee found that you engaged in the sexual abuse of two patients and engaged in disgraceful, dishonourable and unprofessional misconduct. You made inappropriate sexualized comments to two patients and engaged in other egregious behaviour while providing clinical care.

While the Committee recognizes that there may be specific situations where exploring a patient's sexual history may be relevant to clinical care, the Committee could not fathom a situation when it would be appropriate for you, as a physician, to discuss with a patient your own sexual preferences or activities.

In addition, the Committee was quite disturbed to hear that you asked a patient, who had reported to you that another patient was observed selling drugs on the street, to videotape these activities in the community.

Further, in asking a patient to purchase medication for your personal use, you ignored the important distinction between being a patient's doctor and manipulating a patient to serve your own needs.

The Committee was particularly troubled to find that, while administering treatment, you rubbed your groin against a patient's thigh. This is inexcusable and a very serious violation of patient trust.

This is not an official transcript

Despite your many years of medical training and clinical practice, you have neglected to follow important principles of clinical care. Such behaviour undermines the public's trust in the profession. The College has a mandate and commitment to ensure patient safety, and the public expects us to ensure that its members maintain respectful, safe boundaries in their clinical encounters with patients.

We trust that your experience before the Discipline Committee, has taught you some important lessons about appropriate boundaries in the doctor-patient relationship, and that you will not engage in any further misconduct.