

SUMMARY

Dr. Ross Grant Garinther (CPSO# 59711)

1. Disposition

On August 17, 2016, the Inquiries, Complaints and Reports Committee (“the Committee”) required general practitioner Dr. Garinther to appear before a panel of the Committee to be cautioned with respect to lack of patient gowning during physical examination of the patient’s abdomen, and with respect to his cooperation with the College.

2. Introduction

A patient complained to the College that, during the course of a walk-in clinic encounter, Dr. Garinther lifted her top over her breasts, thereby exposing her breast, and sexually assaulted her when he cupped her right breast and then placed his full hand over her left breast over her clothing.

Dr. Garinther did not respond to the complaint for more than six months after the College notified him about it. When he did respond, he stated that he did not inappropriately touch the patient, nor did he inappropriately examine or assault her in any way. Dr. Garinther explained his approach to providing gowns or drapes to patients, stating that he would offer a gown or cover sheet whenever an examination was required which would necessitate the removal of clothing, where a sensitive body location was to be examined, or in a situation where a patient indicated any discomfort or anxiety surrounding an examination, and always with patient consent.

The patient informed the College during the course of the investigation that she had been diagnosed with terminal cancer and was expected to live for only a few months.

3. Committee Process

A Panel of the Committee, consisting of public and physician members, met to review the relevant records and documents related to the complaint. The Committee always has before it applicable legislation and regulations, along with policies that the College has developed, which reflect the College’s professional expectations for physicians practising in Ontario. Current

versions of these documents are available on the College's website at www.cpsso.on.ca, under the heading "Policies & Publications."

4. Committee's Analysis

The Committee was concerned about the serious allegations raised in this case. If the patient's recollection was correct, she described behaviour that did not appear to be related to any examination respecting medication change (which she attended to discuss) or grey stools (which she mentioned during the appointment). The patient appeared to have consistently described her experience both to a friend and to a social worker (who made a mandatory report to the College), then to the College's investigator.

Given the most unfortunate state of the patient's health, however, the Committee was driven to the conclusion that there was no reasonable prospect that the concerns raised in the complaint could be proven at a Discipline hearing. It appeared most unlikely that the patient would be available, in the remaining days of her life, or well enough to testify at any such hearing. There were no other witnesses to her encounter with Dr. Garinther.

The Committee went on to consider whether it should take any action other than a referral to the Discipline Committee in this case. The Committee identified two main concerns which it thought warranted requiring Dr. Garinther to attend the College for a caution.

First, the Committee was concerned at Dr. Garinther's description of when he does or does not think gowning is appropriate during the course of a patient's physical examination. College Policy #4-08, *Maintaining Appropriate Boundaries and Preventing Sexual Abuse*, states that physicians should show sensitivity and respect for the patient's privacy and comfort at all times, including providing appropriate covers and gowns. The Committee was of the view that it would have been appropriate for Dr. Garinther to offer the patient a gown in this case, before undertaking examination of her abdomen.

Second, the Committee was concerned at Dr. Garinther's apparent unwillingness to respond to the complaint, and his tardiness in doing so. Ontario Regulation 856/93, made under the *Medicine Act*, includes as an act of professional misconduct "Failing to respond appropriately or within a reasonable time to a written inquiry from the College." In the Committee's view, in

delaying for six months, Dr. Garinther did not respond professionally to notification of the complaint in this case.