

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

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

LUIS CESAR GARCIA PAN

NOTICE OF HEARING

THE INQUIRIES, COMPLAINTS AND REPORTS COMMITTEE OF THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO has referred to the Discipline Committee of the College the allegation that Dr. Luis Cesar Garcia Pan (“Dr. Garcia Pan”), a member of the College, has 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.

Further information about the allegations is contained in Schedule “A” to this notice of hearing.

A PANEL OF THE DISCIPLINE COMMITTEE WILL HOLD A HEARING under the authority of sections 38 to 56 of the Code for the purposes of deciding whether Dr. Garcia Pan has committed an act or acts of professional misconduct. The hearing will be held at the College of Physicians and Surgeons of Ontario, 80 College Street, Toronto, Ontario or such other venue as the College may advise, on a date to be determined after consultation between College counsel and Dr. Garcia Pan or his counsel, and fixed by the Hearings Office.

IF DR. GARCIA PAN DOES NOT ATTEND AT THE HEARING, the discipline panel may proceed in his absence and he will not be entitled to any further notice in the proceeding.

IF THE PANEL FINDS that Dr. Garcia Pan has committed an act or acts of professional misconduct, the panel may make one or more of the following orders authorized under subsections 51(2), (4.1), (4.2), (5) and (5.2) of the Code:

Orders

51(2) If a panel finds a member has committed an act of professional misconduct, it may make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.
2. Directing the Registrar to suspend the member's certificate of registration for a specified period of time.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified or indefinite period of time.
4. Requiring the member to appear before the panel to be reprimanded.
5. Requiring the member to pay a fine of not more than \$35,000 to the Minister of Finance.
- 5.1 If the act of professional misconduct was the sexual abuse of a patient, requiring the member to reimburse the College for funding provided for that patient under the program required under section 85.7.
- 5.2 If the panel makes an order under paragraph 5.1, requiring the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 5.1.

No gender-based terms, conditions, limitations

(4.1) In making an order under paragraph 3 of subsection (2), a panel shall not make any order directing the Registrar to impose any gender-based terms, conditions or limitations on a member's certificate of registration.

Interim suspension of certificate

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

- (a) under clause (1)(a) and the offence is prescribed for the purposes of clause (5.2)(a) in a regulation made under clause 43(1)(v) of the Regulated Health Professions Act, 1991;
- (b) under clause (1)(b) and the misconduct includes or consists of any of the conduct listed in paragraph 3 of subsection (5); or
- (c) by sexually abusing a patient and the sexual abuse involves conduct listed under subparagraphs 3 i to vii of subsection (5).

Orders Relating to Sexual Abuse

(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

1. Reprimand the member.
2. Suspend the member's certificate of registration if the sexual abuse does not consist of or include conduct listed in paragraph 3 and the panel has not otherwise made an order revoking the member's certificate of registration under subsection (2).
3. Revoke the member's certificate of registration if the sexual abuse consisted of, or

included, any of the following:

- i. Sexual intercourse.
- ii. Genital to genital, genital to anal, oral to genital or oral to anal contact.
- iii. Masturbation of the member by, or in the presence of, the patient.
- iv. Masturbation of the patient by the member.
- v. Encouraging the patient to masturbate in the presence of the member.
- vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.
- vii. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43(1)(u) of the Regulated Health Professions Act, 1991.

Mandatory revocation

(5.2) The panel shall, in addition to anything else the panel may do under subsection (2), reprimand the member and revoke the member's certificate of registration if,

- (a) the member has been found guilty of professional misconduct under clause (1) (a) and the offence is prescribed in a regulation made under clause 43(1)(v) of the Regulated Health Professions Act, 1991; or
- (b) the member has been found guilty of professional misconduct under clause (1)(b) and the misconduct includes or consists of any of the conduct listed in paragraph 3 of subsection (5).

THE DISCIPLINE PANEL MAY, under subsection 53.1 of the Code, make an order requiring Dr. Garcia Pan to pay all or part of the College's costs and expenses.

THE COLLEGE INTENDS TO INTRODUCE as business records, under section 35 of the *Evidence Act*, any writings or records that were made in the usual and ordinary course of business. Without limiting the generality of the foregoing, the College intends to introduce as business records the medical and hospital charts related to the patient care that is the subject of the allegations.

Dr. Garcia Pan is entitled to disclosure of the evidence against him and of other information in the College's knowledge or possession. To obtain disclosure, Dr. Garcia Pan or his counsel or agent should contact the Legal Office of the College of Physicians and Surgeons, 80 College Street, Toronto, Ontario, M5G 2E2, telephone (416) 967-2600 or 1-800-268-7096.

Dr. Garcia Pan must also make disclosure in accordance with Rule 7.02 of the Rules of the Discipline Committee of the College of Physicians and Surgeons of Ontario, which states as follows:

7.02(1) Each party to a hearing shall disclose to the other party the existence of every document and thing that the party, or a witness called by or on behalf of the party, may seek to adduce in evidence or put to any witness at a hearing.

7.02(2) Disclosure by the member shall be made in advance of the pre-hearing conference, not later than sixty (60) days following disclosure by the College or such other time as a case management chair or the pre-hearing conference chair orders, and in any case, for materials other than expert reports, at least thirty (30) days before the commencement of the hearing.

7.02(3) Where a party, after making disclosure, comes into possession or control of or obtains power over another document or thing that the party may seek to adduce in evidence or put to any witness at a hearing, the party shall forthwith disclose to the party opposite the existence of the document or thing, and shall produce a copy of it, if requested, under rule 7.03 below.

7.02(4) If a party fails to comply with the provisions of Rule 7.02(1), (2) or (3), the party may not seek to adduce the document or thing in evidence, or put the document or thing to any witness, without the consent of the other party or leave of the Discipline Committee, which may be given on such terms and conditions as the Discipline Committee considers just.

“Signature on original”

Date: September 23, 2020

Chair,
Inquiries, Complaints and Reports Committee Panel

TO: Dr. Luis Cesar Garcia Pan
Practice Address Not Available

SCHEDULE “A”

1. Dr. Garcia Pan is a family physician who practised in Mississauga, Ontario.
2. Patient A, whose identity has been disclosed to Dr. Garcia Pan under a separate cover, was a patient of Dr. Garcia Pan’s between approximately 1988 and 2010.
3. During a medical appointment in December, 2010, Dr. Garcia Pan engaged in the sexual abuse of Patient A and/or in disgraceful, dishonorable or unprofessional conduct by, among other things, making inappropriate and/or sexual remarks to Patient A, engaging in inappropriate and/or sexual touching of Patient A and engaging in inappropriate and/or sexual behaviour towards Patient A.

ADDITIONAL INFORMATION ABOUT THE ALLEGATIONS AGAINST DR. GARCIA PAN WILL BE PROVIDED IN ADVANCE OF THE HEARING.

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NOTICE OF HEARING

**COLLEGE OF PHYSICIANS AND
SURGEONS OF ONTARIO**

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