

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. John Patrick Taliano, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of witnesses, except expert witnesses, or any information that could disclose the identity of these witnesses under subsection 45(3) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

The Committee also made an order to prohibit the publication, including broadcasting, of the identity of a witness or any information that could identify a witness whose testimony is in relation to allegations of the member's misconduct of a sexual nature involving the witness under subsection 47(1) of the Code.

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

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

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

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

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Taliano, 2020 ONCPSD 42

**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. JOHN PATRICK TALIANO

PANEL MEMBERS:

**DR. P. CHART (Chair)
MR. J. LANGS
DR. D. PITT
MR. J.P. MALETTE, Q.C.
DR. D. HELLYER**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

**MS AMY BLOCK
MS RUTH AINSWORTH**

COUNSEL FOR DR. TALIANO:

**MR. ELI LEDERMAN (absent November 22, 2019)
MR. ROBERT. TRENKER**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

**MS JENNIFER MCALEER (October 28, 30-31;
November 1, 18-20, 2019, December 10, 2019)
MR. ROBERT COSMAN (November 22, 2019)**

Decision and Release of Reasons Date: October 22, 2020

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario (“the College”) heard this matter on October 28, 30 and 31; November 1, 18, 19, 20 and 22, and December 10, 2019. At the conclusion of the hearing, the Committee reserved its finding.

ALLEGATIONS

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

- (i) 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
- (ii) 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 ALLEGATIONS

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

NATURE OF THE ALLEGATIONS

The allegations in this matter relate to Dr. Taliano’s interactions with two adolescent youth: one a patient (Patient A); the other (Witness B), the brother of a relative by marriage. The College alleges that Dr. Taliano engaged in professional misconduct, in that:

- (a) he sexually abused Patient A, a 14-year-old boy, in a medical encounter on August 29, 2012, by touching his penis and testicles sexually under the guise of a genital examination. The College alleges this conduct also constitutes disgraceful, dishonourable or unprofessional conduct;
- (b) he engaged in disgraceful, dishonourable or unprofessional conduct in the manner in which he insisted on “examining” Patient A, despite Patient A’s protestations and refusal of any intimate exam; and
- (c) he engaged in disgraceful, dishonourable or unprofessional conduct regarding Witness B, a 13-year-old boy, in 2011, by entering Witness B’s shower naked and touching Witness B’s penis, and by subsequently commenting about Witness B’s penis size to others.

Dr. Taliano denies the allegations. Dr. Taliano maintains that he conducted a clinically-appropriate genital examination to which Patient A consented. Further, he asserts that he did not enter Witness B’s shower or touch his penis; rather, he entered the bathroom, displaced the shower curtain and yelled at Witness B to hurry up. He denies making any comment about Witness B’s penis size.

ONUS AND STANDARD OF PROOF

The Committee recognizes that the burden is on the College to prove the allegations of professional misconduct. The standard of proof is the civil standard, that is, a balance of probabilities which must be based on evidence which is clear, cogent, and convincing (*F.H. v. MacDougall*, 2008 SCC 53 (CanLII)). There is no onus on Dr. Taliano to disprove the allegation.

The Witnesses

With respect to Patient A, the witnesses for the College were Patient A, Patient A's mother, Ms C (friend of Patient A and Witness B) and Dr. Karen Ferguson (expert witness). The witnesses for the defendant, Dr. Taliano, were Dr. Taliano and Dr. Michael Schwartz (expert witness).

With respect to Witness B, the witnesses for the College were Witness B, Witness B's sister and Patrick Keane (College investigator). Ms. C also provided testimony with respect to her discussions with Witness B. The witnesses for the defendant, Dr. Taliano, were Dr. Taliano, Ms D (former spouse of Dr. Taliano), Mr. E (former spouse of Witness B's sister and brother of Ms D).

Credibility and Reliability

There was conflicting evidence by the witnesses about what occurred during each of the two encounters. The credibility and reliability of the witnesses were key considerations for the Committee. Credibility and reliability are distinct concepts. Credibility refers to the witness's honesty and willingness to speak the truth as he or she believes it to be. Reliability relates to the witness's ability to accurately observe, recall and recount the events at issue which, for the most part in this case, took place some years ago.

The Committee appreciates that an honest witness can be mistaken and, consequently, his or her evidence is unreliable. The Committee may find a witness's evidence to be reliable and credible on one point while, at the same time, finding that the same witness is unreliable or not credible on another point.

When assessing credibility and reliability, the Committee should look to the totality of the evidence and assess the impact of any inconsistencies. Inconsistencies in the witness's evidence on minor matters of detail are to be expected and do not generally affect the credibility of the witness. When inconsistencies are of a material nature about

which an honest witness is unlikely to be mistaken, such inconsistencies may demonstrate carelessness with the truth.

Assessing credibility is ultimately a matter of judgment. There are a number of factors relevant to assessing credibility, including: Did the witness seem honest? Did the witness have an interest in the outcome? Did the witness seem able to make accurate and complete observations? What were the circumstances of the observations? Were they unusual or routine? Did the witness seem to have a good memory? Did any difficulty that a witness had in recalling seem to be genuine or made up? Did the witness seem to be reporting what they saw or heard, or simply putting together an account from other sources? Was the testimony reasonable or consistent? Did they say something different on an earlier occasion? Did any inconsistencies make the evidence more or less reliable and believable? Was there an honest mistake? Is there an explanation for the inconsistency? What was the witness's manner, recognizing that appearance and demeanor can be highly unreliable in assessing credibility?

Sexual Misconduct and Children

Patient A and Witness B testified as adults, but were adolescents when the events at issue took place. In general, where an adult is testifying as to events which occurred in his youth, his credibility should be assessed according to criteria applicable to an adult witness. However, in assessing the weight to be given to inconsistencies (particularly on peripheral matters) the Committee should consider this in the context of the age of the witness at the time of the events (i.e., when they were a child) (*R. v. W.(R.)*, [1992] 2 S.C.R. 122).

The Committee recognizes that sexual abuse of an adolescent is traumatic emotionally and may be associated with shame and humiliation. Reluctance to speak of it and delay in reporting is common. A complainant's failure to make a timely complaint must not be the subject of any presumptive adverse inference based upon now-rejected

stereotypical assumptions of how persons (particularly children) react to acts of sexual abuse (*R. v. D.D.*, 2000 SCC 43 at para 63).

Collusion

Collusion was addressed by both parties in respect of allegations involving both Patient A and Witness B. The credibility and reliability of a witness's evidence may be undermined by evidence of collusion. Collusion refers to the possibility that witnesses may have shared their stories with one another and, either intentionally or accidentally, changed or tailored their stories, rendering their testimony more similar or convincing. Collusion can destroy the potential probative value of testimony that would otherwise have seemed independent and compelling. The trier of fact must consider the possibility of collusion in assessing the reliability of the evidence of the witnesses. In the final analysis, however, it is for the trier of fact to determine whether the testimony of the witnesses is reliable, despite the possibility of collusion, or whether less weight, or no weight, should be given to the evidence which might have been influenced by the sharing of information (*R. v. C.L.*, 2013 ONSC 277 at para 71(CanLII)).

No Similar Fact Evidence

It is important to be clear that there was no application to admit similar fact evidence in this case. The Discipline Committee understands that where there are allegations that involve more than one complainant, the Committee must consider the allegations of each complainant individually and determine whether or not the allegations with respect to that individual have been proved, without regard to the allegations involving the other complainant. The burden is always on the College to prove the allegations.

THE ALLEGATIONS RE PATIENT A

(i) Evidence of Patient A

It is undisputed that Patient A was a patient of Dr. Taliano's at the relevant time.

Patient A was 14 years old when he attended the office of Dr. Taliano with his mother and his sister on August 29, 2012. He had finished grade 8 and would be starting grade 9 in the fall. He was 21 years old at the time of the hearing.

Patient A testified that Dr. Taliano had been Patient A's family doctor for a very long time. Patient A testified that he, his mother and sister often attended appointments together, and he never attended without his mother. Patient A testified that generally, his mother (or mother and sister) would be in the room with him with Dr. Taliano for appointments.

Patient A had a specific recollection of the attendance on August 29, 2012. He testified that he recalled that a psychic read his mother's palm as they waited in the examination room. Patient A testified that he and his mom and sister saw Dr. Taliano in the examination room together. In cross-examination, Patient A testified that he did not recall whether or not he had a scheduled appointment with Dr. Taliano on that date, or if he was simply there because his sister had an appointment. Patient A testified that although he, his mother, and his sister were all in the examination room together, he did not remember anything about the assessment that Dr. Taliano conducted with his sister that day. Patient A explained, "It didn't have anything to do with me, so I didn't pay attention to it." He also did not recall any discussion with his mom. Patient A also testified that he had no recollection of what the examination room looked like or whether it had an examination table in it.

When asked in examination-in-chief what he remembered about the appointment, Patient A testified, "All I remember is that he started to talk to my mom, and then he left the room for a little bit, until he came back and told me that it was time for me to drop my pants." Patient A testified that he did not know why Dr. Taliano had left the room but believes it had something to do with his mother.

Patient A testified that he understood that by saying “drop your pants” Dr. Taliano wanted to do a genital exam, but Dr. Taliano did not say why he wanted to do it and Patient A did not understand the purpose of the exam. He denied the suggestion put to him in cross-examination that there had been a discussion of a genital examination; he testified, “There was really no discussion of a genital exam. It was, ‘Drop your pants. I need to look at your penis’.” He denied in cross-examination that there had been any explanation provided in his presence, with his mom and his sister, about why Dr. Taliano was suggesting a genital examination. He denied in cross-examination recalling any discussion in his presence in which Dr. Taliano explained that he had to check for lumps or bumps, and to ensure that his testicles had descended.

Patient A testified that he had had no prior discussion with Dr. Taliano about his health up to that point. He also testified that he was certain that Dr. Taliano had not conducted any physical examination of him up to that point. Patient A was asked in chief why he was certain about this recollection and he replied, “Because of the utter shock of him coming into the room and telling me to drop my pants after not even talking to me”. In cross-examination, Patient A categorically denied that Dr. Taliano had checked his ears, nose and throat, listened to his heart and lungs and checked his abdomen.

Patient A testified that he had no complaints about his genitalia at that time. Patient A testified that in response to Dr. Taliano’s comment to “drop your pants”, he said “No” several times. He testified, “I said ‘No’ to him and I also said ‘No’ to my mom.” He stated that he said, “No, I don’t want that. I don’t consent to that.” He testified that the tone of his voice was pretty firm.

Patient A testified that his mother reacted by giggling and both his mom and his sister thought it was pretty funny.

He testified that while he was saying “No”, Dr. Taliano was trying to coerce him into it by saying “It will be fine” and that Dr Taliano was also trying to get his mother on board by saying, “He needs to do it”.

Patient A testified that Dr. Taliano then told his mother and sister to leave the room and they did so. When it was suggested to him in cross-examination that it was his mother who had suggested that she and his sister leave the room so Dr. Taliano could conduct the examination in private, he stated that he did not believe that was accurate. Patient A also denied the suggestion put to him in cross-examination that his mother said to him, “Are you okay with it?” and Patient A said, “Yes.”.

Patient A testified that he was then left alone in the examination room with Dr. Taliano. He testified that he was wearing cargo shorts and a tank top that day. Patient A testified that Dr. Taliano then proceeded to take his pants off. “He just tugged at them and they fell.” He testified that Dr. Taliano also took off his underwear and he was then completely naked from the waist down.

Patient A denied the suggestion put to him in cross-examination that once the two of them were alone in the room, Dr. Taliano told Patient A that he was simply going to check his testicles to make sure that he was okay.

Patient A testified that he was standing in the middle of the room when this happened and Dr. Taliano was crouched in front of him, looking at his genitalia, maybe six inches away. In terms of their distance apart, Patient A testified, “I could feel his breath”.

According to Patient A, Dr. Taliano then proceeded to “play with my balls and stroke my penis.” When asked to describe what he meant by “play with my balls”, he stated, “Just like moving them around, tickling them. Like, trying to get me off.” When asked to describe what he meant by “stroke my penis”, Patient A testified,

“It’s like he was -- grasped around the shaft and he was moving it up and down, like you would if you were trying to pleasure yourself.” Patient A testified that while one of Dr. Taliano’s hands was on his penis, the other hand was “cupping and tickling” his testicles, simultaneously. Patient A stated that Dr. Taliano did not say anything while he was doing this. “He was just looking up at me” - “He was looking, like, at my penis and testicles, and then he would look up at me.” Patient A testified that the touching lasted, “No more than, like, five minutes.” When it was put to him in cross-examination, however, that the touching actually only lasted 10 seconds, Patient A explained that it felt like a lifetime to him, but acknowledged that it could have been only 10 seconds.

Patient A testified that he did not see Dr. Taliano write anything down after touching him and Dr. Taliano did not say anything to him. Patient A denied that Dr. Taliano did any other physical examination, such as listen to his chest, or look in his ears or eyes, or any kind of physical examinations that a doctor might do.

Patient A testified that, after Dr. Taliano finished touching him, he simply left the room without saying anything and Patient A then pulled up his own pants. Patient A said that his mother and sister then came back into the room and Dr. Taliano gave them the “all good” to leave.

Patient A testified that his mother asked him as they were leaving how he felt. Patient A said that he responded by saying he felt violated and started crying. Patient A’s interpretation of his mother’s reaction was that she did not believe him - “She didn’t really believe what I was telling her.” He recalls that she said, “It’s OK - that’s what doctors have to do.” He did not tell her the details of what had happened. At his mother’s suggestion, Patient A also spoke to his father about the incident, but only told him that he felt violated. He did not tell his father about being touched by Dr. Taliano in the manner to which he testified. He

confirmed that his father also tried to reassure him and told him that it was a normal part of a genital examination for the doctor to touch his genitals.

Patient A testified that he continued to see Dr. Taliano for medical appointments after this incident, but he never went without his mother and she was always in the examination room with him. When asked if he ever expressed any concern to his mother about continuing to see Dr. Taliano, Patient A responded that he told her he felt uncomfortable, but never really had much of say in it, because it was really hard to get a family physician at that point and they had to keep going to Dr. Taliano. Patient A never had another genital examination by Dr. Taliano.

Patient A was questioned in cross-examination about the next appointment with Dr. Taliano following the alleged incident, which was on November 19, 2012. Patient A testified that he attended that appointment with his mom, but that he did not recall the appointment. When the clinical note was reviewed with him, Patient A confirmed that he recalled telling Dr. Taliano that he would get panic attacks, 20 to 35 minutes weekly for the previous three years, but was now getting them daily, due to issues related to his sister's mental health. He confirmed that he discussed these attacks with Dr. Taliano at this appointment, and methods to deal with them (taking melatonin and seeking counselling). He confirmed that he re-attended eight days later and again discussed his anxiety and panic attacks with Dr. Taliano. In response to questions on cross-examination, Patient A confirmed that he attended Dr. Taliano on eight occasions to discuss his anxiety, depression and panic attacks and received counselling from Dr. Taliano. On each occasion, Patient A attended with his mother or his father. Patient A confirmed that at no time during the eight visits subsequent to the August 29, 2012 visit did he raise that he had been upset by what happened during the August 2012 appointment. He explained in re-examination that he did not feel that it was something he was ready to deal with at the time.

Patient A confirmed in cross-examination that he did not mention the incident again to his mother until 2016, after he had been admitted to hospital for attempted suicide.

The alleged incident came to the attention of the College when Patient A told another physician about the incident and that physician made a mandatory report. Patient A testified in chief that he did not tell the other physician about all of the details of the incident. He added in cross-examination that he only told the physician that he had been sexually abused by another physician and felt violated, but no one believed him. Patient A was asked in cross examination about a note that this physician made, which stated, "Two years later, he says that his general practitioner's licence was suspended for sexually abusing another patient." Patient A denied that he had any reason to believe that Dr. Taliano's license had been suspended. He testified in re-examination that he did not recall making this statement to the physician. He was also asked in cross-examination about another passage in the note which stated, "He feels like his GP was punished enough and currently does not want to bring up any charges against his doctor." Patient A testified that he did not have a discussion with this physician about feeling that Dr. Taliano had been punished enough. (The physician who wrote this note did not testify.)

Patient A testified that he also told Ms C that he had been sexually abused, but he did not go into detail about what happened. He did not recall when he told Ms C but said it was roughly in 2014/2015. He testified that Ms C was shocked but then told him what had happened to Witness B when he was a kid. In cross-examination he clarified that Ms C only told him that Witness B had also been abused but did not provide him with any details. He denied that Ms C told him that Dr. Taliano had grabbed Witness B's penis. Patient A also confirmed that Ms C told him he should switch doctors. When asked in cross-examination if he then told Ms C more details about what had happened, he denied this, saying, "No, I never went over the details of what had happened in that appointment with

anybody except in here”, meaning during his testimony at the hearing. Patient A also denied that he told his mother the details of what had happened after he learned from Ms C that Witness B had also been abused. He stated, “My mom still does not know the details of what has happened in that office...She only knows that I was sexually abused.”

In cross-examination, counsel for Dr. Taliano asked Patient A about a text message dated October 16, 2019 between Patient A and Ms C. Ms C was Witness B’s ex-girlfriend. In this text, Patient A included the following remarks. “I’m fucking fired up. I hate Taliano. I want him dead. I’m actually so done with this fucking shit.” The Committee heard that in or around this time, Dr. Taliano had brought a motion for access to Patient A’s mental health records, and there was a possibility of an adjournment of the Discipline Hearing. Patient A testified that he was expressing his frustration at what he perceived as Dr. Taliano coming at him, going after his and his family’s medical records and phone records. He testified, “And, it wasn’t me who was going after him, it’s the College, and he decided to come at me.” Patient A testified that he was very frustrated and felt attacked, and saying that he wanted Dr. Taliano dead was a figure of speech. Patient A admitted that when he met Ms C later that evening, the two of them talked about his feelings towards everything and she replied that he (Dr. Taliano) was grasping at straws.

(ii) Evidence of Patient A’s Mother

Patient A’s mother described Dr. Taliano as personable, and indicated that he was fine with her children and able to speak with them at their level.

She testified that she recalled the August 2012 appointment because it was just before the new school year. She testified that it had been booked as a follow-up appointment for each of her children. She could not recall if she also had an appointment booked for that day. She confirmed that she attended with both of

her children. She recalled that Dr. Taliano dealt with her daughter first but could not recall details of Dr. Taliano's interactions with her daughter. She believed he just asked general questions about how she was doing and a reference to the fact that school was starting soon.

With respect to the appointment with Patient A, it was also her recollection that Dr. Taliano had left the room briefly after his interaction with her daughter. She testified that when he re-entered, "It was like, 'Okay. [Patient A], it's -- you know, drop your pants'. It's -- and then hysterical [sic] broke out in the room."

When asked if Dr. Taliano had done any kind of physical examination of Patient A before asking him to drop his pants - such as look at his eyes, look at his ears, listen to his chest – Patient A's mother responded that she could not recall for sure.

She testified that Patient A was mortified in response to Dr. Taliano's statement to "drop your pants" and her daughter started laughing hysterically. Patient A's mother testified, "You could see in his face, he was shocked and he was like, 'What? Why? No. No way.'" Her daughter continued to laugh and be disruptive.

Patient A's mother testified that she was also a little shocked as she did not know where the suggestion had come from to do an exam like that, as it had not been discussed at any prior appointment. Patient A's mother said she asked what the appointment was for, and Dr. Taliano discussed the purpose of the exam was to ensure that Patient A's testicles had dropped, because if one hadn't dropped, it could be causing cancer, and that around puberty was the time to check this out.

Patient A's mother testified that her daughter kept laughing at the whole situation, the fact it came out of nowhere and the exam in general. She described her daughter's reaction as typical for an older sister but disruptive - it was disruptive. She testified that even when Dr. Taliano was trying to explain the purpose of the

exam, her daughter was still laughing and Patient A was still reluctant. She added that even after the explanation by Dr. Taliano, Patient A was still reluctant and "I don't know if he totally understood."

Patient A's mother's evidence was that she could not recall if Patient A voiced that he was OK to proceed with the examination. She explained that her daughter was disruptive and laughing and she was trying to "wrap her head around the laughing and the purpose of the exam and hoping [Patient A] felt comfortable with it." She could not say whether Patient A was satisfied with the explanation. On cross examination it was put to her that she had asked her son, "Are you okay with it?" and he had responded "Yes". She responded. "I don't recall that at all." She did recall asking her son if he was OK if she left the room.

Patient A's mother testified that she thought that if she removed herself and her daughter from the room, her son would feel more comfortable with his sister and his mother not sitting there during the exam. She recalls asking Dr. Taliano if it would be easier if she and her daughter left the room and he responded positively.

She testified that when he was finished, Patient A came out of the examination room and that it wasn't long - less than five minutes. When asked how Patient A appeared, she responded "distraught". She testified that Patient A left right away and headed for the elevator. She described him as antsy and impatient as they waited for the elevator. When they got to the car, Patient A broke down crying in the back seat. She described him as curled up in a fetal position against the car door crying. She testified that he said, "I said no. I feel violated." She testified that Patient A cried the whole way home and that when they got home he went into his bedroom and continued to cry. Patient A's mother explained that at that point she thought that his concern was the fact that he had said "No" to the examination. She testified that Patient A did not tell her then, and has never told her, the details of what happened in the examination.

Given Patient A's reaction, Patient A's mother called his father at work. She thought his father could speak with him about his experience in the exam because she expected that his father would have had such an examination previously. She felt that she could not help Patient A or talk to him about it because she did not know what such an examination entailed. She did not participate in the conversation between Patient A and his father.

Patient A's mother called the College the next day because her son was upset and felt violated. She reported that her son had not consented to the genital examination. She was told that if she wanted to file a formal complaint, then Patient A would have to testify. She testified, "that's not something he wanted to be a part of at that time." She did not pursue the complaint to the College because Patient A did not want it and she did not want to force him.

Patient A's mother had a separate appointment with Dr. Taliano a couple of weeks later. She testified that she brought up the incident with Dr. Taliano and advised him that Patient A was very upset and that he felt that he had not consented to the exam and it had happened anyway. Patient A's mother told Dr. Taliano that Patient A's concern was that he had said "no" to the exam. Patient A's mother testified that Dr. Taliano thanked her for raising the issue, indicated that it had not been his intention to upset him, and that it would help him to be more patient with other patients in the future if they are not ready for an exam. He asked if it would help if he called, and Patient A's mother responded, "Absolutely not". She explained that Patient A wanted nothing further to do with Dr. Taliano and had voiced that to her. In cross-examination, Dr. Taliano's patient encounter note for September 12, 2012 was put to Patient A's mother. The note includes the following. "Son, [Patient A], also problem. 'Felt violated' by me insisting on examining his testicles. He admits that he didn't say no and should have." Patient A's mother denied that Patient A had told her that he had not said "No" during the course of the genital examination but afterwards told her that he

felt that he should have. She also denied that she said this to Dr. Taliano. She testified that she told Dr. Taliano that Patient A was upset because he had said "No" to the exam. She stated that Dr. Taliano's note was incorrect.

She had researched getting another family doctor but said that if you already had a family physician it would be very difficult to switch. She also explained that her children had complex health issues and Dr. Taliano had been their doctor for a long time. She confirmed that Patient A never attended an appointment alone with Dr. Taliano again after the August 2012 appointment.

Patient A's mother testified that a couple of years later, in January 2014, her daughter came to her and told her that Patient A had confided in his sister and told her that Dr. Taliano had fondled his penis during that exam back in 2012. At that point, she understood for the first time that the issue was more than consent. As a result, she made another call to the College and explained the situation. She was told that Patient A would have to file a report and make a statement. She was advised to speak with Patient A and find out exactly what had happened. Patient A's mother testified that she did raise it with her son that evening but he wanted no part of filing a report and would not tell her what had happened. Patient A's mother testified that after this Dr. Taliano continued to be her son's doctor because she could not find another doctor.

In cross-examination, Patient A's mother agreed that around the time she placed this second call to the College, she had learned through the grapevine from one of her children - she did not recall who - that there had been another allegation about Dr. Taliano involving another boy and a shower. Although this was around the same time that her daughter told her that Patient A had confided in her about the abuse, it was not the reason she called the College. Patient A's mother was then shown an interview transcript of her interview in 2016 with a College investigator in which she stated that hearing about the allegation regarding the

other boy was one of the reasons that she made the call to the College. She accepted that this was correct.

(iii) Evidence of Ms C

Ms C is Patient A's friend and Witness B's friend - she also previously dated Witness B. She testified to her discussions with respect to both Patient A and Witness B. She was called by the College to provide evidence with respect to the narrative of disclosure by each of Patient A and Witness B. The Committee did not rely on her testimony with respect to the truth of what was recounted to her by either Patient A or Witness B, as that would be hearsay.

She testified that while she was dating Witness B, early in their relationship, probably the first summer going into grade 10, Witness B told her that he was at a cottage with his family, and that Dr. Taliano had gotten into the shower with him and grabbed him by his penis. Witness B did not provide her with a lot of detail but was very upset about the incident and was crying when he told her. She was attempting to console him. She testified that at no point after this did they discuss what happened in the shower.

Ms C was not aware of any other allegations involving Dr. Taliano when Witness B made his disclosure to her. A couple of weeks later, however, Patient A told her that he had been at an appointment with Dr. Taliano and he had been pushed to have a physical examination he had not been expecting. She testified that she understood from Patient A that Dr. Taliano had touched his penis. She testified that Patient A told her, "That it was inappropriate, it was unprofessional and it wasn't done in a way that he thought was medically important whatsoever."

In cross-examination, it was put to Ms C that at her interview with the College investigator she had stated that, "He told me that he had gone to the doctor's office to get a check-up. And, when he went in his mom said, 'Oh, do you want

me to come in with you?' He said, 'No, it's okay. I'll go in by myself.'" Ms C denied that this is what Patient A had told her and explained that her account to the investigators, was "not a verbatim recount. It's me just giving an example of that -- what could have gone down." She stated that this was not word for word what Patient A had told her but rather "an idea of what happened".

Ms C had not told Patient A about what Witness B told her before Patient A disclosed this to her. She then told Patient A about the disclosure from Witness B. She testified that she only told Patient A that it had happened to Witness B as well at the cottage but did not say anything else about Witness B. She testified that she did so because, "It was very concerning to me. You know, I had never even heard the name, and then I heard the name twice very quickly, so it was very startling for me. And, I was very concerned and I kind of was like, 'This is a bigger picture thing. You know, you have to say something. You have to tell your mom. And, you have to change doctors.'" She testified that later on she may have told Witness B that it happened to Patient A as well but would not have disclosed any more information. She testified that the three of them never got together to discuss Dr. Taliano. She also testified that after the College investigation started, neither Patient A nor Witness B told her what they had told the investigator or what had happened with Dr. Taliano. She was eventually interviewed by the College investigator, but she did not discuss this with either Patient A or Witness B. She testified that she did not discuss with Patient A or Witness B the evidence that any of them intended to provide at the hearing.

(v) Dr. Taliano's Evidence re Patient A

Dr. Taliano is a family physician in St. Catherines, Ontario. He obtained his medical degree in 1988 in Ireland. He completed a three-year residency in family practice with a subspecialty in ER medicine at Michigan State in Lansing, Michigan, which ended in 1991. He then started practice as a full-time emergency room physician, which he did until 1998. He decided that the

demands of emergency room practice were not conducive to family life and since he was soon to be married he left his ER practice and established a full-time family practice with a friend. In 2002, he switched family medicine partners. In 2006, his family medicine partner died and after that he carried on practice on his own.

He testified that on an average day in 2012, he would see 30 to 35 patients, but later in cross-examination he indicated that this was how many patients he currently sees on average and agreed that, based on what he reported in his annual returns, this would be an underestimation of the number of patients he saw on average in 2012.

He described the scope of his practice as “cradle to grave” consisting of prenatal care, pediatric care, all the way up to end of life care, including palliative care and house calls for all patients. He estimated that 40 per cent were elderly, 40 per cent were young adults and middle-aged adults and 20 per cent were pediatrics. His office staff in 2012 consisted of an office manager, her daughter who worked part-time and a nurse practitioner.

With reference to his clinical records, Dr. Taliano testified that Patient A first became his patient in February 2008. Patient A's mother was already a patient and she asked that Dr. Taliano take on her children as patients as well. Dr. Taliano stated that he usually saw all three members of the family together as a group, two to three times a year. He described the family as grateful for the care he was able to provide.

Dr. Taliano was taken to the “Day Sheet” for August 29, 2012 appointment. It is a document prepared by his office manager that lists all of his appointments for the day. His Office Manager also uses this Day Sheet for the purposes of billing. Both Patient A and his sister are listed on the Day Sheet as having appointments. Patient A's appointment was scheduled for 10 minutes.

Dr. Taliano was taken to a patient encounter work sheet for June 14, 2012, which was the previous appointment for Patient A. Patient A was seen at that time for nose bleeds and difficulty focussing on and completing tasks for the last three years. Dr. Taliano testified that Patient A's mother did not want any medication given to Patient A for his ADHD, which he had diagnosed earlier. And so, his plan was to give her some information and some websites that talked about behavioural therapies for ADHD. Dr. Taliano testified that he also wrote "BW", which means bloodwork, and "FU" which is follow-up. So, "bloodwork follow-up", which meant that, unless there is an obvious illness present, the next visit is a physical examination, and he would have relayed that to Patient A and his mother.

The file contained bloodwork results, a full panel, dated July 10, 2012, which Dr. Taliano indicated he would not have reviewed until Patient A came in for his full physical in August. Dr. Taliano indicated that this was important, because up to this point the concern had always been Patient A's mental health, and he had not concerned himself with Patient A's physical health. He advised that he had never performed a full physical examination of Patient A before the August 2012 appointment. He had, however, listened to his lungs and checked his ears, nose and throat a lot, as Patient A had asthma.

Dr. Taliano testified that he had a clearer memory of the August 29, 2012 visit than he normally would have because two weeks later, Patient A's mother told him that Patient A had felt "violated" at the appointment and Dr. Taliano was "shocked" and went over in his head what had happened.

Dr. Taliano recalled Patient A attending with his mother and sister on August 29, 2012. Only Patient A and his sister had appointments that day. He assessed the sister first and made a note of that assessment. Dr. Taliano testified that after he finished the sister's assessment he asked Patient A to hop up on the examination

table and conducted “a standard adolescent physical exam”. Dr. Taliano testified that as he was examining him, he spoke with Patient A about safety issues (bike helmets, seat belts, alcohol etc.) and vaccines. Dr. Taliano testified that, “So, I’m talking to him, and as I’m doing that, I’m looking in his ears, I’m looking in his throat. I’m auscultating his chest, checking his musculoskeletal system because I had never done that on [Patient A]. It always had been mental health counselling or asthma and not surprisingly, his bloodwork was fine and he was physically fine.” Dr. Taliano confirmed that Patient A’s mother and sister were in the room during this examination.

Dr. Taliano testified that he then stated to Patient A, “Okay, [Patient A], we’re done the physical exam except I have to check your testicles.” He stated that Patient A responded, “No, no. No, no. You’re not going to do that.”

Dr. Taliano testified that he then explained to Patient A and his mother that a full physical examination includes examination of the testicles because young men can develop testicular cancer, and the sooner it’s detected, the better. He said that he told them that it’s like doing a breast exam on a woman looking for lumps. He testified that he assured them both, especially Patient A, that it would take “less than 30 seconds.”

Dr. Taliano testified that Patient A’s mother, as she left the room, said to Patient A, “Are you okay with this?” and Patient A said, “Yes”. Dr. Taliano testified that he understood this to be “full consent”. With respect to the genital examination that followed, Dr. Taliano testified that Patient A never stated. “I do not consent” and never asked Dr. Taliano to stop. Dr. Taliano testified that Patient A showed “reluctance”, but not “resistance” and described Patient A as “shy”.

Dr. Taliano testified that he told Patient A, “Let’s just get this over with. This is going to take seconds, and then you can go. And, this examination will not need to be done every year.” Dr Taliano testified that as he was putting on gloves, he

said, "Please lower your shorts" and Patient A did so. He denied that he pulled down Patient A's shorts.

For the genital examination, Dr. Taliano explained that he was crouched down on one knee, an arm's length away from Patient A. He testified that he "inspected his penis and his testicles, and inspected for hernias and lumps and bumps. That took about two seconds." He stated that he then used his dominant hand to palpate each testicle, first the left and then the right, for four to five seconds each. He did not note any problems. He stated that he did not touch Patient A's penis.

Dr. Taliano testified that putting on the gloves, giving some reassurance, and doing the exam, took two to three minutes. Of that, the actual exam itself took less than 10 seconds.

Dr. Taliano testified that he was certain he had done a note documenting the examination, but it has gone missing. He testified that there must have been a note, because his office staff billed K017, which is a physical examination on someone between the ages of 4 and 17 and the only way she would have known what had happened would have been if Dr. Taliano had given her his note.

Dr. Taliano denied that he simply walked into the examination room after getting some testing results and said, "Drop your pants." He testified that he would never be so cavalier about something like that.

With respect to the next appointment with Patient A's mother, on September 12, 2012, Dr. Taliano testified that Patient A's mother indicated to him that her son had felt violated by Dr. Taliano insisting on examining his testicles. Dr. Taliano's notes for that appointment also indicate, "[Patient A] admits he didn't say no, but he should have." Dr. Taliano testified that he was surprised and concerned that Patient A had felt violated and it did not make sense. Dr. Taliano said that he

suggested to Patient A's mother that he call or see Patient A, but she did not think that was a good idea. He testified that that made sense to him at the time and also that he did not feel a need to bring it up again. He testified, "I thought it would just further embarrass him or anger him."

Dr. Taliano testified that he continued to see Patient A. He saw him eight times between August 29, 2012 and May 23, 2014. Dr. Taliano stated that Patient A was a difficult patient and had treatment-resistant depression, major depressive disorder, and ADHD. He testified that Patient A, "suffered constantly. He was also in a state of suffering emotionally, psychologically." Dr. Taliano testified that Patient A never showed any discomfort in any of their subsequent appointments and to the contrary, "We got along famously". He testified that he had "an exceptionally good relationship" with the family and then they just "disappeared".

Dr. Taliano testified that in 2012 he was using Healthscreen for his EMR [electronic medical record]. He explained that, based on the appointments in his Day Sheet, a separate Work Sheet was generated for each appointment with some pre-populated information about the patient. His office staff would then provide him with the Work Sheet for each appointment as he preferred to use a pen to make his notes. This Work Sheet would constitute his clinical note which would then be scanned into the EMR system. Dr Taliano agreed in cross-examination that he understood the importance of maintaining medical records and that he understood that clinical notes were to be made contemporaneously. Dr. Taliano agreed that of the 40 visits for members of Patient A's family in 2012 (10 for Patient A's sister; 13 for Patient A's mother; 17 for Patient A), the only note that was missing was the note for Patient A with respect to the August 29, 2012 visit.

Dr. Taliano was first asked by the College to respond about the missing note on July 26, 2018. His counsel responded on his behalf on November 6, 2018, but did not address the missing note. On July 18, 2019, Dr. Taliano provided his

anticipated evidence for the hearing. He indicated with respect to the missing note that Patient A's mother and sister had appointments on August 29, but Patient A did not, but he had offered to see Patient A as well. By way of explanation it was stated that, "Dr. Taliano completed a note for his examination of [Patient A]. Unfortunately, as a result of an administrative error, that note was lost. The fact that Dr. Taliano was not scheduled to see [Patient A] that day likely contributed to this error." Dr. Taliano admitted that this was not accurate (as he had been scheduled to see Patient A that day) but stated this was his theory at the time. On September 27, 2019, Dr. Taliano provided a summary of his anticipated evidence to the College. At that time he indicated that his July 18, 2019 explanation was not correct as he did have an appointment with Patient A on August 29, 2012. This correction was provided after Dr. Taliano had received Dr. Ferguson's expert report on September 23, 2019, in which Dr. Ferguson commented that it would be unusual to offer to do a full physical examination of Patient A at his mother or sister's appointment without a booked appointment.

Despite his evidence that he understood that notes were to be made contemporaneously, Dr. Taliano testified that he may have completed Patient A's assessment without making any contemporaneous notes. He testified that he could have made the notes from memory at the end of the day. He disagreed that he would have measured and made notes of Patient A's blood pressure, height and weight during the examination (despite doing this for his sister). He testified that it is not necessary to take a teenager's blood pressure every year if it was normal the prior year. He emphasized that Patient A's sister had an eating disorder so he (or his nurse practitioner) would take her weight. Dr. Taliano denied College counsel's suggestion to him that there was no clinical note because there was no medical examination.

Dr. Taliano agreed that consent is required prior to conducting a genital examination. His evidence is that he had consent before he examined Patient A. He testified that he had a discussion with Patient A and his mother as to why he

wanted to conduct the examination and that Patient A's mother then offered to leave the room and that Patient A also agreed, not simply to his mother leaving the room but also to the exam - he stated that it was clear. Dr. Taliano testified that Patient A's mother said, "Are you okay with this, [Patient A]?" and he said, "Yes." Dr. Taliano said that he took that as consent to the examination. Further, after he was left alone with Patient A, he asked Patient A to lower his pants and he did so. Dr. Taliano took this act of lowering his pants to be further consent to the examination.

Dr. Taliano testified that he conducted the physical examination of Patient A on August 29, 2012 because he was overdue. Dr. Taliano acknowledged that on October 12, 2011, when this patient was 13 years old, he had conducted an examination of his lungs, his abdomen and had also examined his lymph nodes and extremities. He had taken his blood pressure, height and weight. Dr. Taliano testified that this was required as part of the dental pre-op.

Dr. Taliano explained that he forgot that Patient A had that physical, but Patient A needed bloodwork because he was taking a lot of psychiatric meds, and when he does routine bloodwork, he does a routine physical. He testified that even if he had remembered about the October 12, 2011 examination, "I would have done the physical exam anyway because, like I just said, the pre-op is a cursory look at the person's physical health."

Dr. Taliano agreed that immunizations are a routine aspect of an annual health exam, but agreed that he did not administer the Adacel vaccine at the August 29, 2012 appointment. He agreed that the standard of practice is that this vaccine is to be administered between the ages of 14 and 16, and that he administered the vaccine a few appointments later on April 23, 2013. He testified that he may have been pressed for time on August 29, 2012 and denied that the fact that he did not administer the vaccine on that date was indicative of him not completing a full physical on that date.

Expert Evidence

(1) Dr. Ferguson

Dr. Ferguson obtained her medical degree from Queen's University in 1997. She completed a residency in family medicine at the University of Ottawa in 1999 and a fellowship in women's health and obstetrics in Ottawa and Thunder Bay from 1999 to 2000. She was certified by the College of Family Physicians in 1999 and became a fellow of the College of Family Physicians in 2011. She currently works as a family physician at the West Carlton Family Health Team where she has been in practice since 2000. She is also a lecturer at the University of Ottawa, Department of Family Medicine.

Dr. Ferguson was qualified as an expert in family medicine. Dr. Ferguson testified that:

- The frequency of "well child" visits after age 6 varies by provider. Often, they are prompted by a reminder for immunization.
- There is usually a "well child" visit conducted between ages 14 and 16.
- The immunization provided by family physicians to adolescents aged 14 to 16 is the Adacel vaccine.
- A "well child" visit for an adolescent includes taking a history, including asking about academic performance, social concerns such as bullying, physical activity, smoking, consumption and sexuality. A physician would update the patient's immunizations as needed. The physical exam may vary depending on provider, but usually would include taking height and weight, measuring blood pressure, assessing visual acuity, examining

head and neck, listening to the heart and lungs, examining the patient's abdomen, and some physicians may examine the skin. The visit is usually booked for 10-20 minutes.

- The standard of practice does not require examination of the testicles at an age-14 well-child visit (though it is not below the standard and some physicians still do it). The clinical benefit for this routine screening is minimal: only around 1% of testicles are found to be undescended by age four months, with undescended testicles typically being detected in infants. Routine testicular exams for adolescents have not been shown to improve outcomes in terms of testicular cancer, and this research was available at least by 2011.
- The standard of practice requires physicians to obtain consent for a genital exam directly from the adolescent: (i) Where an adolescent has not said no, express consent is preferable but some physicians might proceed with implied consent; (ii) However, if the adolescent has previously said no to the exam, implied consent is not sufficient and the physician must obtain express consent.

(2) Dr. Schwartz

Dr. Schwartz completed his medical degree in 1973 at the University of Toronto. He then completed a one-year internship at Mount Sinai Hospital. In 1979, he received certification in family practice from the College of Family Physicians of Canada, and then in 1985, he received certification in emergency medicine from the College of Family Physicians of Canada. In 2004, he obtained a fellowship designation from the College of Family Physicians of Canada. He has maintained a family practice since 1974.

Dr. Schwartz testified that he has performed genital examinations on male adolescent patients many times. Dr. Schwartz reviewed all of the relevant documents and the expert report of Dr. Karen Ferguson. He executed the Acknowledgment of Expert's Duty Form.

Dr. Schwartz was qualified to give expert opinion evidence as a family doctor on the subjects of examination of adolescent males and consent for these examinations.

Dr. Schwartz testified that:

- It is within the standard of practice to do a genital examination as part of a routine assessment on a 14 year old male. The purpose of such an examination is to check that the testicles have descended, there are no lumps and check for hernias.
- If a routine annual examination was not done and there were no genital complaints, there is no clinical indication to perform a genital examination in a 14 year old patient.
- It is important to ensure consent for examinations of a sensitive nature.
- If an adolescent has the capacity to consent, the physician must obtain consent directly from the adolescent patient even if their parent is present.
- A physician practising the standard would not embark on a genital examination without consent and the onus is on the physician to obtain consent.
- It was acceptable in 2012 to rely on implied consent for a genital examination of an adolescent boy.

;

- Implied consent for a genital examination is achieved if the patient removes his clothes and this applies even if the patient first verbally says, “No”.
- Assuming that Patient A’s mother asked Patient A if he was okay with her leaving the room and Patient A responded “Yes”, the implication was that it was okay to proceed.
- If Dr. Taliano asked Patient A to lower his shorts and Patient A did so, that was acceptable consent.
- If the patient were standing, an appropriate position for the physician to complete the genital examination is standing and leaning over, on one knee or sitting on a stool/chair. The physician would be an arm’s length away from the patient. After putting on gloves, the physician would palpate the scrotum, feeling one testicle at a time. One hand would be used and the examination would be over in seconds.
- Based on the assumption that Patient A was standing, Dr. Taliano was kneeling approximately an arm’s length away, after visually observing Patient A’s genitalia Dr. Taliano palpated Patient A’s testicles sequentially with his dominant hand and did not touch his penis, Dr. Taliano did an appropriate genital examination.

There was considerable discussion regarding consent and whether it was acceptable if Dr. Taliano removed Patient A’s pants after Patient A said “No” and his mother said she was leaving the room. Dr. Schwartz opined, “It’s grey. He could do it, yes.” If Dr. Taliano said something like, “Okay, I have to remove your clothes, so I can do the exam,” that would be reasonable. Dr. Schwartz went on to add that a 14 year-old adolescent could have said “No”. If there were further “Nos” in the exam room when the two of them were together, then that would change. Dr. Schwartz

opined that it sounded like Patient A was initially reluctant, and refused the examination, but while his mother was in the room, changed his mind. The basis for this opinion was the implication of the mother saying, "I'm leaving the room, is everything cool? Is this okay?"

Dr. Schwartz referred to the wording of the College Policy on *Consent to Treatment* (Policy #4-05) which he interpreted to mean that implied consent would be sufficient if no harm was being done. The College Policy states (page 4, footnote 7):

Although the *Act* contains exceptions to the definition of "treatment," the College advises physicians to obtain consent for all physician-patient interactions. For many of these interactions, a physician will be able to rely on implied consent.

Footnote 7 identifies the exceptions to treatment. The following are not considered to be "treatment": a capacity assessment, health history-taking, the assessment or examination of a patient to determine the general nature of his or her condition, communication of an assessment or diagnosis, a treatment that in the circumstances poses little or no risk of harm to the person, and admission to hospital.

Dr. Schwartz agreed that the College's *Consent to Medical Treatment* Policy does not cover every situation in which an issue with consent may arise.

In respect of the conduct of the examination, Dr. Schwartz accepted Dr. Taliano's evidence over Patient A's, that Dr. Taliano must have been two feet away from Patient A. Dr. Schwartz stated, "There were inconsistencies, or items, in Patient A's statements that I found difficult to accept". Dr. Schwartz agreed that he weighed the evidence of Patient A and made his determination that way. Dr. Schwartz agreed that his expertise is not who is more believable, Dr. Taliano or Patient A.

Notwithstanding, Dr. Schwartz testified that he determined that Dr. Taliano's version was more believable. When faced with the assumption that Dr. Taliano was six inches from Patient A such that Patient A could feel his breath, he agreed that the

examination would not be routine or appropriate. Dr. Schwartz agreed that if Dr. Taliano cupped and played with the patient's testicles while simultaneously stroking Patient A's penis, this would be touching of a sexual nature.

DECISION AND REASONS FOR DECISION IN RESPECT OF PATIENT A

Issues:

1. Did Dr. Taliano engage in professional misconduct in that he sexually abused Patient A by inappropriately touching his testicles and penis under the guise of a medical examination and/or does this constitute disgraceful, dishonourable or unprofessional conduct?
2. Did Dr. Taliano engage in disgraceful, dishonourable or unprofessional conduct by insisting on examining Patient A despite his protestations and refusal of a genital examination?

Sexual abuse of a patient by a member is defined in section 1(3) of the Code as:

- (a) Sexual intercourse or other forms of physical sexual relations between the member and the patient,
- (b) Touching, of a sexual nature, of a patient by the member, or
- (c) Behavior or remarks of a sexual nature by the member towards the patient.

Exception

1(4) For the purposes of subsection (3),
"sexual nature" does not include touching, behavior or remarks of a clinical nature appropriate to the service provided.

The Committee acknowledges that sexual abuse of a patient is an activity which most often occurs in private. As a consequence, the credibility of Patient A and of Dr. Taliano is of critical importance.

The Committee will first set out its findings on the respective credibility and reliability of the witnesses. This is followed by our assessment and findings on the following sub-issues:

- (i) Did Dr. Taliano perform a routine adolescent history and physical examination (well child visit) on Patient A on August 29, 2012?
- (ii) Did Dr. Taliano make inappropriate comments?
- (iii) Did Dr. Taliano have the appropriate consent to perform a genital examination on Patient A?
- (iv) Did Dr. Taliano touch Patient A in an inappropriate manner by fondling his testicles and rubbing the shaft of his penis?
- (v) Were there any relevant significant events subsequent to the August 29, 2012 encounter?
- (vi) Was there any evidence of collusion among the witnesses?

Finally, the Committee reviewed the evidence overall, and addressed the plausibility of the conflicting narratives.

Credibility and Reliability of Patient A

The Committee found Patient A to be a credible and reliable witness. He was able to express himself clearly with respect to the alleged events. Given the time lapse and the fact that he was 14 years old at the time, he was understandably unable to recall some details with respect to exactly what may or may not have been said by his mother or Dr. Taliano in their conversation. That an adolescent may not recall the features of an

examination room is also understandable. This does not diminish his credibility. His evidence was, for the most part, consistent with that of his friend (Ms C) and his mother.

With respect to the time that he and Dr. Taliano were alone, he was consistent in his evidence about not being believed that he had been violated at the August 29, 2012 encounter.

He testified he never shared completely the explicit details with his mother, his friend (Ms C) or anyone before testifying at the hearing. He stated that he did tell the psychiatrist who examined him in hospital and who ultimately submitted a mandatory report that Patient A was sexually abused by his family doctor. However, Patient A did not specify what, if any, details he shared with the psychiatrist at that time.

Patient A appeared to be a sensitive young man, embarrassed at times and authentic under oath. It was clear that the event had a significant impact on him both at the time and subsequently. Patient A gave a very detailed account of what occurred during the encounter with Dr. Taliano. The Committee concluded that this was not a situation in which the patient simply misunderstood what was happening during the clinical examination. Indeed the events he described would never have come to light had he not shared his experience with a psychiatrist during a hospital admission. The Committee recognizes, however, that absence of a known motive to mislead does not add to the weight of one's testimony.

He provided his testimony with candour. He agreed that he had a history of mental health issues for which he attended Dr. Taliano both before and after the alleged event took place. While he expressed a wish to see someone else, there was a physician shortage in the area and the family needed medical support and carried on with seeing Dr. Taliano.

Patient A did not embellish or exaggerate his evidence. To the extent that Patient A's reliability is challenged on peripheral details, the Committee viewed this as slight and

not reflective of his overall evidence, which we accept. There was nothing to suggest that he misinterpreted clinical touching as sexual. He offered no interpretation or excuses and responded appropriately to questions asked. The Committee viewed his evidence as truthful and reliable.

As to inconsistencies in his evidence we make the following findings:

- (i) *What occurred or was said/discussed in the examination room before the alleged abuse*

Patient A testified that he had no memory of a discussion of reasons for a genital examination. He testified that there was really no discussion of a genital examination; it was “Drop your pants, I need to look at your penis.” The evidence of Patient A’s mother and Dr. Taliano was that a discussion about the need for a testicular examination took place, and we accept that it did. Patient A, who was 14 years old at the time, was not engaged in the conversation between Dr. Taliano and his mother. That he failed to understand the reason for the examination is illustrated by his comment he believed Dr. Taliano wanted to examine his penis. At the time this was going on, he was upset with the prospect of an examination and repeatedly said no. In our view given the context, the fact that Patient A did not recall the discussion does not impact on his credibility. Patient A testified that Dr. Taliano told his mother and sister to leave the room and they did so. Dr. Taliano and Patient A’s mother testified that as the environment in the examination room had become disruptive, Patient A’s mother asked if it would be better for her and her daughter to leave the room and Dr. Taliano responded yes. Patient A, who was understandably upset, not wanting to have a sensitive examination and not directly engaged in the discussion, interpreted what he heard and we find no significant inconsistency here. Whether he was aware or not of his mother’s offer to leave, his mother and sister left the room and Dr. Taliano agreed they should. The fact that Patient A does not recall the discussion between his mother and Dr. Taliano as to why a genital examination was being proposed, and the fact that he is mistaken and it was his mother

who offered to leave the room (not ordered by Dr. Taliano to do so), does not in the opinion of the Committee weaken his credibility.

(ii) What the psychiatrist wrote in his consultation letter

Patient A testified that he told a psychiatrist (Dr. Savenkov) that he had been sexually abused by his family doctor and that no one believed him. In a consultation report dated January 14, 2016, Dr. Savenkov writes that Patient A told him that two years after the alleged sexual abuse, his general practitioner's license was suspended for sexually abusing another patient, that he (Patient A) felt this was punishment enough and that he did not want to bring up any charges. Patient A could not recall making these statements to Dr. Savenkov and testified he had no reason to believe that the statements were true. Dr. Savenkov did not testify, and his medical records were not entered in evidence. The only sworn evidence with respect to what Patient A told Dr. Savenkov is that of Patient A, and we accept his evidence as truthful.

(iii) What Patient A wrote in an email exchange in October 2019 with his friend Ms C

Patient A wrote that he was "fucking fired up", that he hated Dr. Taliano and wanted him dead. "I'm so done with this fucking shit". Patient A was challenged on these comments under cross-examination. He explained that he was frustrated at the time, and thought that Dr. Taliano was coming after him and going after his family's medical and phone records. As his evidence shows, Patient A felt attacked. He explained that "wanting him dead" was a figure of speech. The Committee heard that this occurred around the time that the defense was seeking Patient A's mental health records. While the language used is strong, the explanation and the circumstances at the time make the outburst of feeling understandable. We find no reason to support the conclusion that Patient A wanted to exact revenge on Dr. Taliano and that his evidence was fabricated as a result. While it is clear that Patient A was expressing animus towards Dr. Taliano at that time, such animus was not inconsistent with his account of what happened.

The Committee heard that Patient A had agreed to provide his email exchanges and did not try to hide or obscure them; rather he wished to move the process along.

Credibility and Reliability of Dr. Taliano

The Committee had significant concerns with Dr. Taliano's evidence.

When asked if he had a clear recollection of the appointment of August 29, 2012, he testified that he had a clearer recollection than he normally would have as Patient A's mother confronted him at her next visit, saying that her son had felt violated.

As will be discussed below, Dr. Taliano's evidence on a number of issues changed as the hearing progressed. In other instances, his evidence was not supported by his medical record on Patient A and his explanations were self-serving. At times, Dr. Taliano was argumentative and displayed hostility to Patient A's mother, and directed inappropriate comments to College counsel. These features factored in our assessment of Dr. Taliano's credibility and reliability. Further, the Committee did not accept his explanations for the "lost" medical note pertaining to August 29, 2012.

The Committee noted the following:

(i) Missing Medical Record - Chart of August 29, 2012 visit for Patient A

Dr. Taliano had no clinical record of this encounter with Patient A. There is a dispute as to whether or not Dr. Taliano conducted a full physical examination on Patient A on August 29, 2012 prior to examining Patient A's genitals. Dr. Taliano says that he did. Patient A says he did not. Patient A's mother did not recall whether an examination was done. Both experts and Dr. Taliano agree that it would not be proper to conduct a genital examination in isolation. This is why the absence of the medical record is

significant, because if Dr. Taliano had performed a full physical examination prior to the genital examination, one would expect there to be a record of the examination.

Dr. Taliano testified that he made a note of the physical examination of Patient A on August 29, 2012. He was certain. Patient A testified that he did not see Dr. Taliano writing anything during the encounter.

OHIP was billed for an annual examination, but the fact that there was a day sheet of OHIP billing for the examination does not prove a chart note had been made for the encounter or that an examination took place.

Dr. Taliano offered “Murphy’s Law” or an administrative error as the reason there was no medical record. The possibility of this particular note, which relates to the timing of the alleged misconduct, going missing when Dr. Taliano testified that every encounter was checked by staff and returned to him if information was missing, and where no errors were made in any of the many visits recorded on this family, is remote at best. This was the only chart missing out of 40 documented appointments of Patient A and his family with Dr. Taliano. The chart for Patient A’s sister’s appointment of August 29, 2012 was not missing, only Patient A’s.

The fact that this particular note was missing was problematic for the Committee. The absence of any record is certainly consistent with Patient A’s evidence that no examination was conducted.

(ii) Inconsistent Statements re Missing Note

Dr. Taliano did not reveal that the chart entry was missing when he initially responded to the College on November 6, 2018. He stated that the scheduled appointments were for Patient A’s sister and mother when he initially responded to the College on November 6, 2018.

Dr. Taliano then advised in July 2019 that the note of August 29, 2012 on Patient A was lost due to an administrative error as Patient A did not have a scheduled appointment, and that this contributed to the error.

After he received Dr. Ferguson's report in September 2019, which suggested that it was unusual to "fit in" a well child visit for an unscheduled patient, he changed his story to say that Patient A did have a scheduled appointment, which was confirmed by the day-sheet. Dr. Taliano testified that his previous recollection that the absent chart was due to the add-on appointment of Patient A had been an error, and Patient A had a scheduled appointment because the day sheet recorded an OHIP billing for an annual well child visit.

The Committee is troubled by the fact that Dr. Taliano made specific representations to the College as to why there was no medical note (no appointment scheduled), which he then subsequently admitted were not true.

(iii) Evidence re Note Taking

Dr. Taliano testified that it was his practice to make contemporaneous notes. He then testified that he would note something like a blood pressure, but the rest he would do in the evening and that is what he did with Patient A's chart. Dr. Taliano stated he would often not measure vital signs such as height and weight, but just estimate them. He stated that he would sometimes memorize the height and weight of patients and record them at the end of the day, despite seeing 30 or more patients in a day. When confronted with the unlikelihood of recalling specific details such as height and weight in the evening, he then said he could estimate what was normal after thirty years of experience. Waiting until the end of a busy day to remember and record all the details of a full examination is not possible without some note taking. In the context of a busy practice, the Committee considered this to be highly unlikely and therefore not credible.

(iv) Need for Physical Examination on August 29, 2012

Dr. Taliano stated that the reason he conducted a full physical examination for Patient A on August 29, 2012 was that Patient A was overdue.

The medical record shows a completed physical examination was done as a pre-operative dental examination approximately ten months earlier, on October 12, 2011. Dr. Taliano stated he forgot he had done a full history and examination at Patient A's pre-dental appointment, and that it did not count as a complete history and physical examination. Dr. Taliano said the pre-dental history and examination was done by a nurse practitioner. Dr. Taliano testified that the pre-operative examination was only a cursory exam. While the examination was done by a nurse practitioner, all elements such as vital signs etc. were included and Dr. Taliano signed off and billed for this. Dr. Taliano stated that he considered the nurse's examination to be perfunctory, yet agreed that the examination included the head and neck, heart and lungs, abdomen, lymph nodes and extremities. Dr. Taliano's position that he simply forgot that full examination had been done ten months earlier was self-serving.

His evidence that BW and FU entered on the visit in June 2012 meant that a physical was due at the next visit, does not mean that a full history and physical was done at the next visit.

Dr. Taliano's chart note for Patient A's mother made September 12, 2012 states that Patient A felt violated, yet admits that he should have said no and did not. This was directly put to Patient A's mother and she denied saying that Patient A admits that he should have said no and did not. Her evidence was that Patient A was concerned that he had not consented to the genital examination, which is what she believed at the time and what she reported to the College two weeks before. We accept the evidence of Patient A's mother on this point, and find the chart entry by Dr. Taliano self-serving.

Dr. Taliano's comment regarding Patient A's mother that "everything that came out of her mouth was a lie to protect her son"; was in the Committee's view unfounded.

The Committee did not find Dr. Taliano's evidence to be credible or reliable and had serious concerns about his evidence on the matters to be decided.

Credibility and Reliability of Patient A's mother

The Committee accepted the evidence of Patient A's mother as credible and reliable. Her responses were direct and appeared honest. Her reactions were in keeping with those of a concerned mother. She called Patient A's father at work to discuss her son's reaction to the examination; she called the College to raise her concern about consent; and she raised the issue directly with Dr. Taliano at her next visit.

Patient A's mother readily admitted not recalling some details such as whether any examination preceded the "drop your pants" comment. She agreed that she had faith in Dr. Taliano's treatment of her family and made some complimentary comments about him. She did not show any sign of animus towards Dr. Taliano.

Patient A's mother testified that hearing about another boy and a shower was not the reason she contacted the College a second time. In a prior College interview in 2016, she said to an investigator that it was one of the reasons she made the call. Patient A's mother did not dispute the inconsistency. The second call was made when her daughter informed her that Patient A's encounter with Dr. Taliano involved fondling. The Committee finds that knowledge of an allegation concerning a second boy may have had some influence in prompting her to call the College a second time. The Committee did not consider this inconsistency to be material.

Credibility and Reliability of Ms C

The Committee accepted the evidence of Ms C as credible and reliable. Her evidence was direct and uncomplicated. She was caught up in this matter as she was a friend of Patient A and Witness B and was the nexus for the allegation relating to the second case. She appeared to be well-grounded and honest.

Weight Given to Expert Evidence

The Committee accepted the opinion evidence of Dr. Ferguson. The Committee found her to be qualified and knowledgeable in her field and she gave her evidence impartially. We will refer to her evidence where it is appropriate to do so, in the following analysis.

Both experts agreed that it was within the standard of practice for a genital examination to be performed as part of a routine physical examination of an adolescent male. In Dr. Ferguson's view, however, a genital examination was not a requirement as undescended testicles are usually identified in infancy.

Both experts agreed that a genital examination in isolation, in the absence of a genital complaint, would be inappropriate, as did Dr. Taliano.

As to consent, Dr. Ferguson testified for an adolescent patient the standard of practice requires physicians to obtain consent for a genital examination from the adolescent where the adolescent has the capacity to consent. She further opined that where an adolescent has not said no, express consent is preferred but some physicians may proceed to do an examination with implied consent. Her view was that where the adolescent has said no to the examination, implied consent is not sufficient and express consent must be obtained.

In respect to the matter of consent, the Committee did not accept the evidence of Dr. Schwartz as he clearly misunderstood his role. Dr. Schwartz acknowledged that he accepted the evidence of Dr. Taliano over that of Patient A, and that he weighed the evidence and made a credibility determination. His comments that appropriate consent had been obtained must be seen in that context. As a consequence, his evidence on the consent issue was not helpful to the Committee.

The Committee accepts Dr. Ferguson's opinion on the matter of consent over that of Dr. Schwartz for the following reasons:

- The Committee having heard Dr. Schwartz testify is of the view that Dr. Schwartz exceeded the proper role of an expert to give an independent, fair and objective opinion. Dr. Schwartz made a credibility assessment and he accepted the evidence of Dr. Taliano over that of Patient A.
- Dr. Schwartz signed a document outlining the duty of an expert to provide opinion evidence that is fair and impartial.
- Dr. Schwartz acknowledged that determining who is more believable is beyond his expertise.
- Dr. Schwartz persisted in his opinion that appropriate consent had been obtained when Patient A had said no to the examination, his mother offered to leave the room and Dr. Taliano removed Patient A's pants. In support of his opinion, Dr. Schwartz inserted assumptions that Patient A's mother said the exam was necessary or that Dr. Taliano told Patient A he was going to remove his pants.
- Dr. Schwartz indicating that by saying "Okay this is for your own good, this is a reasonable thing to do" constitutes implied consent.

- The Committee finds Dr. Ferguson's opinion impartial and fair in the circumstances.
- The issue over the wording of the College Policy is a matter of semantics and in our view does not directly apply to the circumstances of this case.

ANALYSIS OF THE ISSUES

(i) Did Dr. Taliano perform a routine adolescent history and physical examination on Patient A on August 29, 2012?

The Committee accepts the following uncontested facts:

- Patient A and his sister attended Dr. Taliano's office in the company of their mother on August 29, 2012. Both Patient A and his sister had scheduled appointments.
- Dr. Taliano examined Patient A's sister and made a clinical note recording his findings.
- Throughout the encounter, except for a brief period when Dr. Taliano left the room and when Patient A and Dr. Taliano were alone (when it is alleged the sexual abuse took place), Patient A, Patient A's mother, his sister and Dr. Taliano were all present.
- No clinical note referring to a physical examination of Patient A on August 29, 2012 appears in his medical chart.

Dr. Taliano testified that he undertook a full annual well child visit on Patient A on August 29, 2012. Dr. Taliano testified that he did the full history and physical

examination while Patient A's sister and mother were in the room with Patient A. Patient A's mother did not remember this and Patient A denied it.

Dr. Ferguson, Dr. Schwartz and Dr. Taliano agreed that a genital examination in the absence of a full history and physical would not be indicated unless there was a symptomatic genital complaint. Patient A had no such genital complaint.

Dr. Taliano testified that while examining Patient A, he talked about safety issues, whether he wore a bicycle helmet, used a seat belt, smoked weed or drank. While talking, he examined Patient A's throat, listened to his chest and checked his musculoskeletal system. Dr. Taliano stated that a discussion of vaccination was a standard part of his annual well child visit but he did not administer the Adacel vaccine to Patient A at that visit. This examination and discussion was all allegedly done in the presence of Patient A's mother and sister. As discussed above, Dr. Taliano testified that he made a clinical note of the examination of Patient A, which was lost.

Patient A disputes that a history and physical examination was performed on the August 29, 2012 visit. Patient A testified he was certain no examination or history occurred because Dr. Taliano's comment to "drop his pants" came as quite a shock when Dr. Taliano had not spoken with him at all during the appointment.

Patient A's mother testified that she could not recall with certainty whether Dr. Taliano did or did not do an examination of Patient A. She recalled Dr. Taliano left the room after examining her daughter and then, upon coming back, asked Patient A to "drop his pants." She also was shocked by Dr. Taliano's comment to Patient A.

Dr. Taliano was challenged that Patient A was not due for a full annual well child examination as he had a pre-operative dental assessment done ten months earlier. Dr. Taliano's response was to demean that assessment though it was clear that a complete examination had been done. He also stated he just forgot. The statement that he forgot about the pre-dental examination when it was fully documented in the chart and signed

by him was not credible. His claim that the pre-dental examination was not a full examination was also not credible given his admissions regarding what that examination entailed.

Dr. Taliano stated that the entry on Patient A's chart in June which included BW and FU was a trigger to him to do a full physical at the next visit. This may be so, but it does not mean that the examination was done. In addition, the fact that OHIP was billed for a full assessment does not confirm the examination was performed. The fact that blood tests were ordered at Patient A's June 15, 2012 visit and the day sheet of OHIP billings for August 29 indicated that he billed for a physical examination were not proof that Dr. Taliano did a full annual well child assessment on August 29, 2012.

The medical record which is complete in all other respects does not contain a clinical note for August 29, 2012 despite Dr. Taliano's assertion that he made a note. Patient A testified that he did not see Dr. Taliano write a note. Dr. Taliano described the administrative processes in his office and could offer no reasonable explanation as to why, if he did the examination as he testified; there was no corresponding clinical note in the chart.

Dr. Taliano's story shifted as the evidenced unfolded. He first did not mention the missing note then later attributed it to the fact that Patient A was an add-on or fit-in patient, and when that was disproven he offered "Murphy's Law" or administrative error. Dr. Taliano's assertions that he would not make chart entries until the end of the day and that he was able to estimate normal height and weight etc. from his experience, which were offered as possibilities of why there was nothing in the medical record, was in the view of the Committee an inadequate excuse and not believable.

Furthermore, the history and examination that Dr. Taliano described would require engaging Patient A in conversation about sensitive lifestyle issues which, in the view of the Committee, would be recalled by both Patient A and his mother. Such a discussion

would have laid the foundation for the genital examination as part of the assessment and not resulted in the unexpected shock of the “drop your pants” remark.

After consideration of the above, and our assessment of the respective credibility of Dr. Taliano, Patient A’s mother and Patient A, the preponderance of the evidence leads to the conclusion that no history and physical examination of Patient A was performed that day. This is supported by the absence of a medical record, the evidence of Patient A and the evidence of both Patient A and his mother that the “drop your pants” comment came as a shock. Further, conducting such an examination on August 29, 2012 would not be medically indicated in the absence of some recent complaint given that a full medical examination has been conducted on October 12, 2011.

The Committee finds that Dr. Taliano did not perform a full history and physical examination (well child visit) on August 29, 2012.

(ii) Did Dr. Taliano make inappropriate comments?

It was the evidence of Patient A and his mother that after Dr. Taliano had examined Patient A’s sister, Dr. Taliano briefly left the room and upon returning made the statement to Patient A, “Drop your pants”.

Both Patient A’s mother and Patient A were shocked, as this appeared to come from nowhere. This is consistent with our finding above that there was no prior history taken or physical examination of Patient A on that date.

Dr. Taliano testified that he said “Okay [Patient A], we’re done the physical except I have to check your testicles”.

The Committee finds that the comment “drop your pants” was made and it was unexpected and led to the questions by Patient A’s mother as to the need for a genital examination.

The Committee finds that the use of the phrase “drop your pants” to a 14 year old patient, without any prior explanation, especially in the presence of his mother and sister, was unprofessional.

(iii) Did Dr. Taliano have the appropriate consent to perform a genital examination on Patient A?

Dr. Taliano, Patient A’s mother and Patient A were in agreement that Patient A initially refused the genital examination.

Patient A’s mother and Dr. Taliano discussed the reasons for performing a genital examination. Patient A did not participate in the discussion beyond repeatedly saying “no”, or “no way”. He understood that Dr. Taliano was wanting to examine his genitals and he clearly resisted. The atmosphere in the room deteriorated and became disruptive with Patient A’s sister laughing. This led Patient A’s mother and sister to leave the room. Whether this was suggested first by Patient A’s mother and agreed to by Dr. Taliano or otherwise is really of no moment.

Before leaving the room, Patient A’s mother testified that she said to Patient A, “Are you ok with it?”; she explained that she meant was Patient A okay with her leaving the room. Patient A responded “yes” or “yup”, whereupon his mother and sister left the room.

Dr. Taliano testified that he took from this interchange that this was a full consent to perform a genital examination. Patient A was clear in his evidence that he did not consent. He felt coerced. There was no evidence that Dr. Taliano specifically asked Patient A for his consent. Indeed Dr. Taliano described Patient A as reluctant.

We find that Dr. Taliano overreached in concluding that what Patient A said to his mother when she was leaving the room constituted consent to the genital examination.

Dr. Ferguson was questioned at length on the consent issue. College Policy 4-05, *Consent to Medical Treatment*, was put to her and the suggestion was made that pursuant to the policy, one did not require express consent for a treatment if there was no risk of harm.

Dr. Ferguson was firm in her view that with an adolescent patient, the standard of practice requires physicians to obtain consent for a genital examination directly from the adolescent if the adolescent has the capacity to consent. Where an adolescent has not said no, express consent is preferable but some physicians might proceed with implied consent. However, if the adolescent has previously said no to the exam, implied consent is not sufficient and the physician must obtain express consent. Dr. Schwartz was of the belief that appropriate consent had been obtained. The Committee preferred the evidence of Dr. Ferguson on this point and gave little weight to the evidence of Dr. Schwartz for the reasons cited earlier.

Dr. Taliano testified that once alone with Patient A, he said, "Please lower your shorts" and that Patient A lowered his own pants and underwear for the genital examination. Patient A gave a different description, testifying that once they were alone, Dr. Taliano tugged at his pants and they fell with his underwear. This evidence is irreconcilable. The Committee accepts the version of Patient A over that of Dr. Taliano based on our view of their respective credibility and the circumstances which include Patient A saying "no" or "no way" and Dr. Taliano's description of Patient A as reluctant. In our view it is more likely than not that Patient A's description is accurate and that Dr. Taliano did tug at Patient A's pants and underwear.

The Committee finds that Dr. Taliano did not obtain the necessary consent from Patient A to examine his genitals. Dr. Taliano proceeded to tug at Patient A's pants and underwear when he had a reluctant adolescent who had repeatedly said no to examination. In ignoring the need to obtain express consent from Patient A and proceeding to remove his pants, Dr. Taliano acted inappropriately and engaged in conduct which the Committee viewed as disgraceful, dishonourable or unprofessional.

(iv) Did Dr. Taliano touch Patient A in an inappropriate manner by fondling his testicles and rubbing the shaft of his penis?

Dr. Taliano and Patient A give strikingly different descriptions of the touching which occurred when they were alone in the examination room. Their evidence is irreconcilable.

Patient A testified that he was in the middle of the examination room and that Dr. Taliano was crouched and close enough that he could feel his breath, maybe six inches away. He described Dr. Taliano “playing with my balls”, and tickling or cupping his testicles. He testified that at the same time Dr. Taliano’s other hand grasped Patient A’s penis and was moving up and down. Patient A explicitly described the movements on his penis as if “you were trying to pleasure yourself”. It felt to him that Dr. Taliano was trying “to get him off”. Dr. Taliano said nothing while this was occurring. Patient A describes Dr. Taliano as looking up at him and then looking at his genitals while this happened. He testified that this lasted no more “than like five minutes” but under cross-examination he agreed this could have been only ten seconds. Patient A testified that it felt like a lifetime to him. Patient A clearly felt that he had been sexually abused.

Dr. Taliano testified that after Patient A had removed his pants and underwear, he proceeded to crouch down one knee, put on gloves and was about an arm’s length away from Patient A. He inspected Patient A’s penis and testicles and looked for lumps and hernias. He then gently palpated both testicles and found that everything was fine. He estimated that he was two or two and a half feet away from Patient A. He testified that he did not touch Patient A’s penis at all. After examination, he told Patient A to pull up his pants and go and see his mom. When asked about whether he simultaneously touched Patient A with both hands, Dr. Taliano responded, “That is the most absurd thing I have heard in my thirty years of practice”. “Physicians don’t examine that way.”

The Committee accepts that what Dr. Taliano describes is an appropriate genital examination. It is orderly and is not open to misinterpretation. Patient A was clear that what he experienced went far beyond what might be interpreted as a normal exam. Patient A felt that Dr. Taliano had rubbed his penis and fondled his testicles in a manner to produce sexual arousal.

Patient A's comment that Dr. Taliano was close enough that he could feel his breath is an unusual statement, and in the Committee's view not fabrication or exaggeration. Given the circumstances and positioning of Dr. Taliano and Patient A, the Committee was of the view that this was possible, and more likely than not occurred. With respect to the estimated distance between Dr. Taliano and Patient A, their respective estimations were at one extreme or the other. Clearly Dr. Taliano was close enough to observe and touch Patient A.

Had the examination been carried out as Dr. Taliano suggests, there would have been no concern that sexual abuse had occurred. That was not the case. Patient A appreciated that what happened was wrong and he reported that he felt violated after the examination. This, of course does not mean that sexual abuse happened. We include this simply to illustrate that there was never a time when Patient A deviated from his belief that he was sexually abused or that he may have possibly misunderstood Dr. Taliano's action.

That Patient A was upset upon leaving Dr. Taliano's office is clear from the evidence of Patient A's mother. When asked by his mother how he felt after the examination, Patient A starting crying. He responded that he felt violated. His mother described him as distraught and said he behaved in an antsy and impatient manner. Once in the car, he curled up in the fetal position against the door crying. Patient A's mother testified that Patient A continued to cry all the way home and then in his room. Patient A did not share details of what happened with his mother beyond saying no and that he felt violated. Again, the fact that Patient A was upset does not mean that sexual abuse occurred; however, it illustrates that what transpired was sufficient to cause an extreme

reaction in Patient A. In the Committee's view his reaction immediately following the encounter is inconsistent with the encounter as described by Dr. Taliano, even in a boy who was thought to be shy and had never had a prior genital examination.

The Committee carefully considered the evidence and concluded that Patient A was truthful, and we accept his version of events. The fact that Dr. Taliano testified that he has never had a homosexual experience and did not have an erection during the encounter is not relevant and did not factor into our decision. We accept that sexual abuse is often about power and that it is not necessary for the perpetrator to derive sexual gratification from the abuse.

The Committee finds that Dr. Taliano engaged in sexual abuse of Patient A during an office encounter August 29, 2012.

(v) Events subsequent to the August 29, 2012 encounter

Patient A's mother testified that she contacted Patient A's father at his work given Patient A's reaction to the encounter with Dr. Taliano. She thought his father might help him. She did not participate in the interaction. Patient A's mother testified that she called the College the next day because Patient A felt violated and was upset. At that time, she believed that the concern was that Patient A had not consented to being examined. She understood from her conversation with the College that Patient A would have to testify if she made a formal complaint. Patient A did not want to be a part of this and she did not force him. These actions with Patient A's father and the College which occurred following the encounter are consistent with the evidence that Patient A was upset to a degree that his mother felt that she needed to take some action.

Several weeks later, Patient A's mother testified she had an appointment with Dr. Taliano. At the end of the appointment she told Dr. Taliano that Patient A was very upset that he had said no and not consented, and the examination was performed anyway. Dr. Taliano volunteered to call Patient A and Patient A's mother responded,

“absolutely not”. Patient A had said that he wanted nothing more to do with Dr. Taliano. Following this visit Dr. Taliano made a note in Patient A’s mother’s chart. This note states that her son felt violated by Dr. Taliano insisting on examining his testicles. “He [Patient A] admits that he didn’t say no and should have.” Patient A’s mother denied that she made such a statement and testified that Dr. Taliano’s note was incorrect. The Committee accepts Patient A’s mother’s evidence on this point and concludes that the statement in the chart made by Dr. Taliano was inaccurate and self-serving.

Patient A’s mother testified that she researched getting a new family doctor but understood that it was hard to switch if you already had a family physician. Her children had complex health issues and she and the children were long time patients of Dr. Taliano. The Committee accepts her reason for continuing to attend Dr. Taliano after August 2012.

Patient A testified that in 2014, or 2015 (he was unsure of the exact date), he told his friend Ms C that he had been sexually abused by his doctor but did not go into detail. Ms C thought this occurred in the autumn of 2013. Ms C informed him of what had happened to her friend (Witness B) and encouraged him to change doctors. Ms C understood that Dr. Taliano had touched Patient A inappropriately after Patient A said no. Ms C believed Dr. Taliano had touched Patient A’s penis.

Some time in 2014, Patient A’s mother became aware that the issue with Patient A at the appointment was more than just consent, and involved fondling. At that point, she again contacted the College and was advised to speak with Patient A about what happened. Patient A wanted no part in filing a complaint and would not discuss it with her.

The manner of gradual disclosure which occurred here was, in the view of the Committee, consistent with the reluctance to speak. Delay in reporting is common in sexual abuse of an adolescent.

When hospitalized in 2016, Patient A disclosed the abuse to Dr. Savenkov who provided a mandatory report to the College. Patient A testified he did not describe in detail what had occurred in 2012. His evidence was that he never went over the details with anyone except in the Discipline hearing. It was put to him that Dr. Savenkov was an exception and he agreed. We do not take this as an inconsistency; Patient A was clear that he did not go into detail with Dr. Savenkov. This is supported in the consultation note and we accept Patient A's evidence on this point.

(vi) Possibility of Collusion

The Committee considered collusion between Patient A, Witness B and Ms C because they knew each other and all three were aware of the incidents between Patient A and Dr. Taliano, and between Witness B and Dr. Taliano. There was no evidence that gave the Committee cause to be concerned about collusion. Ms C was credible when she stated that they did not discuss what they were going to say at the hearing. Patient A and Witness B were reluctant to appear at the hearing and did not file complaints with the College. The Committee concluded there was no collusion between Patient A, Patient A's mother, Ms C and Witness B.

Plausibility and Conflicting Narratives

In serious cases where the issues and consequences are significant, it is important for the Committee to consider the plausibility of the different narratives to ensure a thorough examination of complex and irreconcilable testimony. We find a plausible narrative of events laid out in the evidence of Patient A, Patient A's mother, Ms C and supported by other evidence including the medical record of Patient A, mandatory reporting and other College contact.

Patient A was described as shy and sensitive. He had mental health issues in his family and personally. Without question, in 2012 he was a vulnerable patient. The Committee found him to be truthful and direct. He did not file a complaint with the College and was

drawn into the allegations by way of a mandatory report. There was a striking absence of vindictiveness in his testimony.

The encounter with Dr. Taliano was characterized by a significant power imbalance. Patient A felt coerced. Even Patient A's mother, to some extent, was also subject to the power imbalance. Patient A reacted instinctively, clearly refusing to have a genital examination. Dr. Taliano nonetheless exerted his dominance and carried on, notwithstanding the discomfort of his young and vulnerable patient. Even Dr. Taliano agreed there was no verbal consent and the patient was reluctant.

The abusive acts which occurred defy explanation. The Committee was not in doubt, however, that they occurred. The distress exhibited by Patient A as corroborated by his mother directly after the examination illustrates the profound effect on this 14 year old boy.

The absence of an encounter note was consistent with Patient A's evidence that no note was written and no examination was conducted before he was asked to "drop his pants".

Patient A's mother and Ms C corroborate Patient A's evidence in the timing of his disclosure of the abuse.

Patient A made no attempt to hide his emails with Ms C. The inflammatory comments regarding Dr. Taliano were faced directly and explained to the Committee's satisfaction.

Patient A did not make a formal complaint. He was drawn into the process. He came to the hearing and laid out what had happened to him in an uncluttered and direct manner. The Committee believed Patient A's account of what occurred.

There was no evidence that gave the Committee cause to be concerned about collusion. Ms C was credible when she stated that they did not discuss what they were

going to say at the hearing. Patient A and Witness B were reluctant to appear at the hearing. There was no evidence of any collusion between Patient A and his mother. The Committee concluded that there was no collusion between Patient A, his mother, his friend Ms C or Witness B.

Conclusion respecting Patient A

The Committee finds Dr. Taliano engaged in professional misconduct in that he sexually abused Patient A by inappropriately touching his testicles and penis under the guise of a medical examination, and this also constitutes disgraceful, dishonourable or unprofessional conduct.

The Committee finds Dr. Taliano engaged in disgraceful, dishonourable or unprofessional conduct by telling Patient “A” to “Drop his pants” and by insisting on examining Patient A despite his protestations and refusal of a genital examination.

THE ALLEGATIONS RE WITNESS B

The College alleges that Dr. Taliano engaged in professional misconduct, in that he engaged in disgraceful, dishonourable or unprofessional conduct regarding Witness B, then a 13-year-old boy, in August 2011, by entering Witness B’s shower naked and touching Witness B’s penis, and by subsequently commenting about Witness B’s penis size to others.

Witness B, who was not a patient of Dr. Taliano, was 13 years old when he attended a weekend event at the cottage of Dr. Taliano. Others present that weekend included Dr. Taliano, his then wife (Ms D), their daughter, Ms D’s brother (Mr. E) and Witness B’s mother, brother and his sister (who, at the time, was married to Mr. E).

This allegation is characterized by two irreconcilable narratives. Both cannot be true. It is by dissecting these two stories, examining the inconsistencies, testing the strength of

the evidence, assessing credibility and reliability and considering what is more plausible, taking into account that the burden of proof is on the College, that the Committee came to its conclusions.

Summary of the Testimony of Witnesses

Witness B

Witness B testified that his sister was married to Mr. E, who was Dr. Taliano's wife's brother. There were family gatherings before and after the wedding of Witness B's sister and Mr. E in 2011 when Witness B spent time with the Talianos. Dr. Taliano was not his doctor.

Witness B testified he went to Dr. Taliano's cottage at Port Colborne once; this was the Labour Day weekend 2011 when he was age 13. This was a family visit and included his mother, brother, sisters, Mr. E and the Taliano family. He could not recall who he drove to the cottage with. After arriving in the early afternoon, they swam, shot bb guns, "screwed around on the beach" and had a barbeque (BBQ). In the evening, they had a campfire and Dr. Taliano got a WD-40 can and blew it up. Witness B left by 1:00 pm the next day. He spent only one night at the cottage.

Witness B testified that he did not take a shower on the first day. His mother, brother and one sister left that evening and did not spend the night at the cottage. He testified that he woke up the next morning in his underwear, put on some pyjamas, and then walked to the washroom and had a shower. He testified that he shut the door. His bedroom was on the second floor, across from the bathroom. He testified that the shower was a relatively small stand up shower. The shower head was above, "like it wasn't against the wall" and the water was coming from above. He entered the shower and closed the door. He denied that he had been in the shower for a long time. When it was put to him in cross examination that the shower had a curtain and not a door, he agreed that his memory was not clear on whether it was a door or curtain.

While he was washing the soap from his hair, he did not hear the washroom door open before the shower door opened and Dr. Taliano was standing there naked, and he got in the shower. Dr. Taliano quickly started to make jokes about conserving water. "Not a whole lot of water here. We got to make this last." He repeated this two or three times at least. Dr. Taliano was speaking at a normal room tone. Witness B considered these remarks as jokes and was trying to give a reason for his (Dr. Taliano's) sudden appearance. Witness B described Dr. Taliano as pudgy and his genitalia shrunken in because of his weight. He likened it to the Penguin from the original Batman movies. He had never seen Dr. Taliano naked, either before or after. Witness B testified that he said nothing at first while Dr. Taliano was joking about the water. While the soap was running off his hair, Dr. Taliano rubbed the soap off Witness B's chest and at one point his (Dr. Taliano's) hand crossed over and rubbed his penis. He described this as a pass over not a jerk off motion. Witness B estimated that the time Dr. Taliano remained in the shower with him was brief, like 20 or 30 seconds.

Witness B described his reaction as initially being shocked, but he was not totally taken aback as he had played hockey his whole life and spent a lot of time in locker rooms where men shower together. After Dr. Taliano touched his penis was when Witness B noted that "obviously he was not just showering with me". Witness B testified that Dr. Taliano said nothing when he left the shower. Witness B testified that when he got out of the shower, Dr. Taliano was no longer in the washroom. Witness B finished showering. He got dressed in his room and went down the stairs. Witness B denied that he had been asked to hurry up and that Dr. Taliano had shouted to him to get out of the shower.

Witness B testified that the next thing he recalled was standing on the staircase telling them what had just happened. As far as he could remember, those present were his sister, Mr. E, Witness B's mother and Dr. Taliano's daughter; he could not honestly recall Dr. Taliano being in the room. He told them that Dr. Taliano got in the shower with him; he did not say "he touched my penis". They just laughed it off and he went back up to his room and kept packing. He did not recall laughing about this himself.

In cross examination it was put to Witness B that everyone was sitting in the living room watching "Iron Man" and he agreed. He agreed his memory of this was distinct. He also agreed that he had said "Iron Man" was watched in the evening. When challenged that it was possible that the shower incident occurred in the evening, he emphatically and repeatedly denied this. At the time of the College interview he had said that they watched "Iron Man" before they went to bed and that he recalled that distinctly. He admitted that he was very confused.

Witness B testified that he was nervous, embarrassed and confused about what happened. He did not divulge any further details about what happened in the shower to the group at that time. When it appeared to him that his sister didn't take notice of what had happened, he just moved on. Witness B had no memory of Dr. Taliano being present when he spoke to the others or, if present, his reaction. He did not recall if Dr. Taliano was present and he did not recall Dr. Taliano making the remark attributed to him by his sister (to be discussed later). He did testify, however, that he did not stay, but went back upstairs to pack.

He did not tell anyone else what happened when at the cottage or immediately thereafter. On cross examination it was put to him that he told his mother the day after he came home from the cottage. He testified that he told her shortly thereafter but he did not remember exactly how long it took him to tell her. He proceeded to say he actually did not remember speaking to her about it. He confirmed that he could not recall when he told his mother, when directly questioned by the Committee.

Witness B testified that in 2013, he told his girlfriend (Ms C) at the time about the shower incident. He was in grade 9/10, around the time of beginning high school. He said he was at Ms C's house and saw a number of pill bottles with Dr. Taliano's name on them. These related to Ms C's father. Witness B testified that he told her about the "shower incident" but he could not recall the level of detail he provided to her. He

testified that she tried to comfort him. Ms C's evidence was that this occurred at Witness B's house, but he did not remember this being at his house.

Witness B agreed that since 2011, he had talked about it with his mom, with his sisters, his father, Patient A, Ms C and College investigators in 2017. He believed that he had not told any of them about the incident before his sister split up with Mr. E. This is inconsistent with his sister's evidence that their mother told them a few days after the Labour Day weekend that her boys were not to be left alone with Dr. Taliano, which strongly suggests he told his mother something. He admitted that he could not recall when he told his mother about the incident at the cottage.

Witness B testified he did not make a complaint to the College. In 2017, when he spoke with investigators he agreed that he could not remember if Dr. Taliano touched his penis. On re-examination, Witness B explained that when interviewed by College investigator Mr. Luff, he had stowed it away in his memory, he had not revisited it for three or four years and he was embarrassed and ashamed.

Witness B was questioned on his interview with the College and said he was 99% sure Dr. Taliano was naked because he got in the shower. This was revisited in reply, with Witness B agreeing that Dr. Taliano was naked.

Witness B admitted to using weed recreationally, but did not use it back at the time of the cottage incident. Witness B was pressed on cross-examination as to his specific recollection of dates of the event, about his school years, and his relationship with Ms C. He did not remember saying to Ms C that Dr. Taliano had grabbed his penis, but did tell her about the shower incident. Witness B testified that he found out later that Ms C had told Patient A. He understood that was how the College got his name.

Witness B was questioned about an email he received from Dr. Taliano's daughter; he viewed the content as an idle threat. He added that he did not think that that this was

sent by Dr. Taliano's daughter because of the salutation which was not reflective of how kids his age would message on Facebook.

Witness B's sister

Witness B's sister testified that the weekend at the Taliano cottage was in late August 2011 shortly after she and Mr. E were married. She testified that those present included her mother, Witness B and another brother who arrived together. Her sister also came with her boyfriend. She drove separately with her then husband. Witness B's sister testified that the intent was that her family was to just come for the day, have dinner and then they would be going home.

Witness B's sister testified that she recalled the family hanging out at the beach, having fun. Asked if she took a shower that day or evening she said she did not recall, "Probably not" as she would not have stepped away from her family. She testified that neither her mother nor either of her brothers showered that day. She did not know if any of the Talianos did.

Witness B's sister testified she did not recall much about dinner but they had a bonfire on the beach. When asked how the evening ended, she testified that Witness B was invited to sleep over. She could not recall whether it was Dr. Taliano or his wife who extended the invitation. There followed some discussion with Witness B's mother, but in the end she agreed to let him stay. The conversation related to her mother's concern that Witness B would wake through the night, as he had been subject to night terrors. In addition her mother wanted to be fair to the other brother who was unable to participate because of his autism.

She testified that she and Mr. E, Witness B, Dr. Taliano, Ms D and Dr. Taliano's daughter stayed that night and everyone else went home.

The next morning, she recalled being out on the deck with her husband. She could not recall whether Dr. Taliano or Ms D were there. She believed that Witness B was shooting an airsoft gun at cans, such as he had been doing the night before. She testified that Witness B went to take a shower.

Witness B's sister testified that the next thing was that Witness B came to her and said that Dr. Taliano had gotten in the shower with him. Dr. Taliano was there at the time and laughed. He said he told Witness B that they had to conserve water at the cottage so they had to share showers. She recalled Ms D and Mr. E laughing and saying "John" and that it was inappropriate. Dr. Taliano then made reference to the size of Witness B's penis, saying words to the effect that Witness B had a large penis and it made him (Dr. Taliano) feel inferior. Again, people laughed. She described her brother (Witness B) as laughing nervously and seeming unsure, as if he was looking to her to tell him it was okay. She remained quiet. She testified she was trying to make sense of it all and what her mother's reaction would be.

She believed the explanation to share showers was a joke so Dr. Taliano could get into the shower. She said that it was not a thing at the cottage for people to share showers to conserve water. She, Mr. E and Witness B left the cottage after the shower incident.

She was challenged in cross examination that the shower took place the evening before. She testified that was incorrect. Witness B's sister testified that after he showered, Witness B got his clothes on and came to the back deck. She noted his hair was still wet. She agreed that though her memory was not crisp she understood what it was about and the important pieces. It was put to her that Witness B said, "John opened the shower curtain on me". Her response was that is absolutely not true.

Witness B's sister testified she could not exactly say when, but within a day or two, her mother came to speak to her and Mr. E. Her mother stated that Witness B and his brother were never to be alone in the company of Dr. Taliano. She did not recall Mr. E's reaction.

Witness B's sister describes a further interaction which she observed between her mother and Mr. E occurring later in September 2012. At that time, she and Mr. E had separated but she was still living in a section of the marital home (as her lawyer had advised her not to leave). In mid-October, she moved back to her mother's home briefly and then to her own place on November 1, 2012. The separation from Mr. E was amicable at first, but in the last few weeks he had cut her off the internet (when she was trying to find a job and an apartment), disconnected the TV and stopped paying her. Mr. E had made life difficult and she was upset and called her mother. Her mother came over and (paraphrasing) told him (Mr. E) to stop being a jerk and doing things that made life difficult for her (Witness B's sister). Her mother went on to say that if he didn't smarten up, she was going to share his family secrets. During this conversation, Witness B's sister was standing at the door of the room and could hear what was said but did not observe Mr. E and her mother. Witness B's sister understood the family secret was Dr. Taliano getting into the shower with Witness B, naked.

Dr. Taliano - Testimony in respect to Witness B

Dr. Taliano testified that he was married to Ms D from 2000 to 2014. He denied ever having a homosexual encounter and is currently in a committed relationship.

Dr. Taliano testified he had a recollection of the Labour Day weekend in 2011. He considered it (the shower incident) a non- issue. He said his recollection was heightened because of threats later made by Witness B's mother. He stated normally that he wouldn't know what he did a month ago on a weekend. He claimed his memory was clearer than it would normally be. In cross-examination he said his better memory was "because a few months later", Witness B's mother accused him of molesting Witness B. He recalled "I meditated on it." "I remember it clearly, the incident, because I had to". He testified that the incident was never brought up until Mr. E's and Witness B's sister's marriage broke up (approximately 12 months later).

Dr. Taliano agreed that he, Ms D and Mr. E had talked after Witness B's mother made her threat, and said "What do you recall happening?" He testified he was relieved when his wife said she was there and saw what he did. When challenged, he said that he would not have remembered without that discussion. He responded, "It became an issue when [Witness B's mother] tried to extort [Mr. E]" and I'm not a dummy. I do have--I can recreate -- I can remember back if it's something important". He explained that he was not creating something but using his memory and then agreed it was in conjunction with his ex-wife and brother-in-law. Dr. Taliano testified that this was because he did not want this to turn into some kind of "freak show" as it has.

He testified that he, his then wife, daughter, her friend, Mr. E, Witness B's sister, Witness B, Witness B's brother, another sister and Witness B's mother were present the Labour Day weekend. When asked about Witness B's other sister's boyfriend, he was not certain, but sort of thought he was there also.

Dr. Taliano testified to the details of what activities went on that day at the beach including tubing, boating and using other beach toys. He said that Witness B loved it. Around 4:00 or 5:00 pm, they went to the cottage and prepared to go out for dinner. He testified he warned people not to flush for pee or have long showers, not to waste water because the septic system was not able to handle excessive water usage.

Dr. Taliano testified that he did not shower after coming from the beach, but the girls always showered. He testified that the girls would shower in the ensuite bathroom off the master bedroom. There were three showers at the cottage. He stated that all three could operate at the same time albeit with reduced pressure but the problem was the septic system. He was absolutely sure that Witness B showered in the afternoon.

At some point, he went upstairs. He took note that Witness B was in the shower for around 20 minutes. He stuck his head in the bathroom, which was full of steam, and told him that he had to get out. He said that he really did not have to open the door as it was ajar, and steam was pouring out of the bathroom. He then agreed on cross examination

that it was possible that the door was closed and that after warning Witness B he left the door ajar to let the steam out and convey that shower time is over. He noted that Witness B grunted. Dr. Taliano testified that he did not remember what he specifically did next but around ten minutes later, "I opened the door fully", and confirmed Witness B was in the shower. He then pulled the curtain so he could communicate with Witness B. He testified he said, "[Witness B], you don't know how dangerous it is for our cottage. If you are not out in two minutes, I'm going to pull you out." He commented that this was not said in a menacing way but as a stern warning. He recalled that Witness B responded, "Get out". He observed that Witness B was naked, his hair was full of soap and he was facing the shower faucet. He testified he did not touch Witness B or Witness B's penis. He testified that he was wearing a bathing suit at the time and possibly a tee shirt. He left the bathroom leaving the door open just to show Witness B he was breaking the rules and potentially ruining the weekend. At that time, Ms D and Mr. E were on the landing or stairs because they heard the commotion.

Dr. Taliano admitted that he was angry. He agreed he could have spoken to Witness B through the curtain but he didn't. He was mad and annoyed. He agreed that he opened the shower curtain just enough to get his head in and saw the backside of Witness B. He agreed that this was rash and impolite, but he denied entering the shower and denied being naked. He went on to say that Witness B was "willfully damaging his property" He said he had a strange relationship with Witness B's mother and a very poor relationship with Witness B's sister, when asked why he did not approach them to get Witness B out of the shower. He agreed in retrospect that what he did was insensitive. He agreed that the shower was large enough that it was physically possible for him to enter the shower with Witness B.

Dr. Taliano testified that Witness B got out pretty quickly after, and that neither he nor Witness B said anything about it. Dr. Taliano denied making any comment about Witness B's genitalia. When asked about Witness B's sister's evidence about a penis remark he testified, "That's an invention. That's a clever lie".

Dr. Taliano described the event as a non-issue. He said they carried on and went out for dinner.

Dr. Taliano testified that there had always been a curtain and not a door to the shower.

When it was suggested to him by College counsel that he got in the shower with Witness B, was naked and touched him including his penis and later made a remark about the size of Witness B's penis, Dr. Taliano responded, "And I'm going to suggest to you that you are so wrong. I hope that you're just doing this because it's your job and not because you believe this, these accusations. They're preposterous." "Do I look like a person who would want to go to jail?"

Ms D (Dr. Taliano's former wife)

Ms D testified that she is a 51 year-old interior decorator who was married to Dr. Taliano for fourteen years. They separated in 2014. They have a daughter. On the Labour Day weekend in 2011, they invited Witness B's sister's family to the Taliano cottage for the day. Those present from her family included Mr. E, Dr. Taliano, her daughter and a friend and herself; from Witness B's family there was Witness B's sister, another brother and sister and their mother, along with Witness B.

They spent the day at the beach. Late in the afternoon, they went to the cottage and gathered in the living room. She was asked about the deck and testified there is a small deck (large enough to hold a table) right outside the door and stairs that go down to the beach. This is close to the BBQ and is only used at mealtimes, especially mornings. It is not a play area.

Ms D testified that Dr. Taliano gave his usual speech about the sensitive septic system. She did not know how many people expressed an interest in taking a shower but they all wanted to get out of wet bathing suits and into fresh clothes. She testified that Witness B went to take a shower first, using the guest bathroom on the second floor. Ms

D testified that while Witness B was in the shower, she was in the master bedroom with a couple of the children who wanted to watch something on the TV and she wanted a break from their guests. She testified that the girls were planning on showering next in her ensuite bathroom. She testified that they could not shower at the same time as there was poor water pressure there. The shower downstairs was used for dogs.

She went to get towels for the girls after Witness B had been in the shower about 15 minutes. She then corrected this saying 30 minutes; Witness B was warned in 15 minutes and 30 minutes later she went to get the towels for the girls. She testified that "We didn't think it was necessary to get his mother involved to come upstairs and get him out of the shower. It was a simple request". She testified she did not recall anyone showering after Witness B.

At some point, Dr. Taliano came upstairs, rapped on the door, poked his head in, and said something like "[Witness B], hurry up. You've been in there long enough". She was getting some towels from the foyer for the girls and she saw that Dr. Taliano was getting irritated. She described the bathroom door as ajar. While on the main landing, she clearly saw him open the door and enter the bathroom. She testified that she saw him open the shower curtain a few (four to six) inches. She heard Dr. Taliano say something to the effect of "[Witness B], get out of the shower or I am going to haul you out". Witness B responded, "Get out". She testified that there was some levity in this response. She described the episode as brief, she was on the landing the whole time and saw Dr. Taliano come out of the bathroom. She testified that Dr. Taliano did not get into the shower, or reach in and touch Witness B and Dr. Taliano had a bathing suit on at the time. She testified that she thought Witness B was taking advantage of their hospitality and it was an ignorant thing to do.

During this time, Witness B's family were in the living room. She testified that she was taken aback when she overheard Witness B's mother say, "Should I be worried about what is going on upstairs?" She heard but did not see Witness B's sister reply "Of course not, mom". Mr. E was upstairs.

Ms D testified she did not see Witness B leave the shower and she did not remember any conversation about it. There was no mention about opening the shower curtain, or Dr. Taliano getting into the shower with Witness B. She did not hear Dr. Taliano make any comments about Witness B's genitalia.

That evening they had a dinner reservation, but they did not go. They had a bonfire and at the end of the night everything was happy and fine. She did not recall what they had for dinner. She did not recall Witness B staying overnight. She testified the families met on special occasions and she never experienced any discomfort from any of Witness B's family moving forward. She testified no one thought about the August 2011 weekend again until Mr. E told her that in an attempt to extort money from him, Witness B's mother had threatened to have an interesting story to tell about what happened in the shower at the cottage. Ms D testified she was very concerned as she knew nothing happened.

Ms D testified she receives \$2,700.00 per month in child support from Dr. Taliano. She agreed that her daughter was currently in private school and tuition is \$34,000.00 a year. She also receives spousal support of about \$11,500.00 per month which is ongoing until she dies. This was an arrangement made in lieu of investments. Ms D testified that she has her own business, the income from which varies but there are many months of the year where the amount exceeds her spousal support. She agreed her reputation was important to her, and she is involved in charity work in the community.

Ms D testified that her daughter has suffered profoundly from the allegations against Dr. Taliano and that it would be harder on her if the allegations were proven. Nonetheless, she felt her daughter's life was secure. Ms D described an incident where her daughter, who was devastated, called her from school and was extremely upset after a newspaper article came out.

She testified that Mr. E, her younger brother, had a good relationship with Dr. Taliano and that he had been at the cottage many times. She maintains regular communication with him.

Ms D testified that she always had a lot of company at the cottage on weekends and over long weekends.

She maintains contact with Dr. Taliano and she knows him pretty well. She described him as very eccentric, with an "odd" sense of humour - rarely inappropriate, but different and he pushes the envelope a little bit. She went on to explain that he was different in a likeable and enjoyable way. She is friendly with him. She talks with him and has shared personal subjects such as dating and the effect of the allegations on their daughter.

Ms D testified that she had a unique relationship with Witness B as he was a creative boy and she had been creative as a teenager. She described herself as somewhat of a mentor.

Ms D testified that Mr. E, her brother, talked with her immediately after the confrontation with Witness B's mother. He and Witness B's sister were divorcing at the time, and she (Ms D) was still married to Dr. Taliano. This occurred in the fall of 2012. She testified she remembered specifically when Mr. E told her about this incident, as her father had just had knee surgery and they were all at the hospital when he told them what had occurred in the kitchen. She testified that it was at the hospital, and they thought that it was something to be reported to his lawyer and a call was made to the lawyer from the hospital. She testified, " My brother made the phone call. I was standing next to him". Ms D testified that her brother had been instructed by his lawyer to stop paying Witness B's sister money. She agreed that she wanted the panel to know that it was not a decision made on his own. She and Dr. Taliano did not know whether they should be calling their own lawyer.

Ms D said she took the threat very seriously, Dr. Taliano less so. She testified that Dr. Taliano attributed this to Witness B's mother "spouting off" and that they would worry about this if necessary. Nothing further happened, but she assumed that if her child had been assaulted, Witness B's mother would go to the police. It is what she would do; as a mother she would call the police.

When Ms D was taken back to the conversation at the hospital, she agreed that the three of them had discussed the accusation. She did not recall discussing what happened at the cottage with Dr. Taliano, she said it was not necessary. No one had thought about the cottage incident for a whole year.

In an interview with the College investigator in March 2019, Ms D discussed the cottage incident and the threat that Witness B's mother made to Mr. E. She told the investigator that the threat occurred six months after the shower incident. She agreed that she was mistaken. She described her interview with the College as "on the fly" and that she was not given the opportunity to really think about the events. She described to him a bird incident (where Dr. Taliano had put a suffering bird out of its misery) which upset Witness B's sister that weekend. Ms D testified that "She went nuts". Ms D testified that Dr. Taliano attempted to apologize to Witness B's sister, and after that there was a normal feeling to the evening.

Ms D testified that the shower incident was a non-issue, without question, and that she recalled it because of the reaction of Witness B's mother when she said, "Should I be concerned about what went on upstairs?". Ms D said that Witness B's mother enjoyed challenging Dr. Taliano. Then it turned lighthearted when Witness B's sister responded. It bothered her that Witness B's mother would make such a comment. Ms D testified she found it frightening. Ms D testified that she did not think of it again until her brother said that Witness B's mother tried to extort money and threatened to make up a story about what happened in the bathroom between Dr. Taliano and Witness B. She then said it became a big issue. She testified that Witness B's mother took every opportunity

to challenge Dr. Taliano in social situations on medicine and big pharma; she described him as a target.

Ms D testified that after the threat, she and Mr. E did not discuss what happened at the cottage. She said there was no need, as nothing happened. They only discussed the allegation and the attempt at extortion.

Ms D testified she had become accustomed to Witness B's mother "passively aggressively attacking Dr. Taliano"; Witness B's mother had a huge dislike of doctors and big pharma. She (Witness B's mother) would also attack her brother, who is a dentist. She was not comfortable with Witness B's mother, ever.

When questioned about memories fading with time, Ms D said not in this case, when they deal with a threat or when an event has turned ugly for some reason when it wasn't. She testified she was on guard for her family. When asked by College counsel whether she had discussed the minutiae with Dr. Taliano and Mr. E, Ms D responded they had, several times. "We knew that we were on the upper floor. My brother and I knew we were on the landing. I was on the landing. He was on the upper floor. My husband knew what I saw in the shower".

Ms D testified that it was her assumption that that they all remembered the same thing. She described the only conversation she had with her brother about this entire case was that they both felt an obligation to the College, to these children, and to Dr. Taliano to bring the truth forward as they knew it. That was the only thing they discussed, nothing else.

Ms D testified that in spite of Witness B's sister's divorce from her brother (Mr. E), Dr. Taliano had helped Witness B's sister find a job so she was self-sufficient, and that they were not enemies after the divorce. Ms D agreed she assumed that her brother (Mr. E) gave his ex-wife enough money to not warrant carrying through with the threat but she did not know.

She bumped into Witness B's mother about two years ago; they had a friendly discussion.

When questioned about when the investigation started, she was unsure and Dr. Taliano had not brought it up with her until the proceedings were going to start.

In respect of her daughter, Ms D testified that her daughter felt a kinship especially with Witness B's brother, as he was autistic and Witness B's mother had been married several times and had boyfriends in and out of the house.

Ms D testified that she was interviewed by the College in March 20, 2019. Ms D told Dr. Taliano that this was annoying. Ms D testified she had no recollection of telling Mr. E that she was interviewed. She did not recall Mr. E telling her he had been interviewed and did not know he had been interviewed on March 14, 2019.

During the College interview, Ms D said that Witness B's mother had said "absolutely nothing" when the shower incident happened. This was inconsistent with her evidence at the hearing. When this contradiction was put to her, Ms D indicated that she had, prior to the hearing, raised this point with Dr. Taliano's counsel (Mr. Lederman). He advised calling the investigator if there was anything she needed to add. She did not do so. When the transcript was put to her, Ms D was certain what she meant was that Witness B's mother did not make any statement about Dr. Taliano doing anything lewd in the shower with her son. Ms D finally agreed that she may have forgotten to add it notwithstanding Witness B's mother's comments were one of the main reasons her (Ms D's) memory is so clear. She had no explanation other than the interview was nerve-racking.

Near the end of her evidence, Ms D was questioned about who stayed overnight. She did not recall Mr. E, Witness B's sister or Witness B staying over, but agreed it was possible, adding Witness B could have asked to stay. She had no memory of Witness B

being there the next day. She said Dr. Taliano came upstairs periodically and did this and that —she did not know what he was doing. Mr. E also came upstairs to his room for some time. She agreed that Dr. Taliano was “pissed off” with the length of Witness B’s shower and that she was irritated also.

Testimony of Mr. E (brother of Ms D)

Mr. E is a 45 year-old dentist currently doing an endodontics residency. He has known Dr. Taliano since he was 19 years old. He described his current relationship as friendly, but that it had cooled off. There were some issues that came up between Dr. Taliano and his family. Mr. E did not offer further explanation. He testified that he married Witness B’s sister in 2011 and he thought they separated at the end of July 2012.

Mr. E testified that Witness B’s family came to the Taliano cottage only once and that Witness B was present on the relevant weekend. He testified that they spent the day tubing, jet skiing and hanging out at the beach. He stated upon returning to the cottage that everyone either took a shower or expressed interest in doing so. He testified the septic system was an ongoing issue. He did not recall who showered first.

Mr. E testified that Witness B’s mother, his brother and his other sister left in the evening.

Mr. E testified that Witness B took a shower. When questioned about when the shower occurred he said he has a “pretty clear memory” that Witness B showered after the day at the beach, because that is the usual routine. He agreed he did not recall anyone else showering, but that he probably had a shower, because he always does.

While Witness B was in the shower, Mr. E testified that he was either on the stairs or landing. He heard Dr. Taliano say “Get the hell out of the shower” following which he heard sort of a shriek. After Witness B got out of the shower he heard Witness B say, “Oh, John opened the curtain.” He saw Dr. Taliano leave the bathroom and testified he

was wearing a bathing suit and he was not wet. Mr. E testified he did not hear Dr. Taliano make a comment about the size of Witness B's genitalia. There was no comment made about seeing Dr. Taliano naked. He testified this took place in the afternoon. He considered this to be a non-issue.

Mr. E testified that he left the next day with his wife and Witness B. The shower incident was not mentioned on the way home or at subsequent family gatherings.

Mr. E testified he recalled an incident with Witness B's mother about a year later. He added, that was why he had any sort of recollection about this incident, which the Committee took to mean the shower incident. At the time (2012), he and his wife were living separately in the same house and he was frustrated. He testified his wife's mother came to him and basically threatened him. She confronted him saying "do right by my daughter". Mr. E testified that Witness B's mother was going to say that Dr. Taliano molested her son. The implication he took from this was unless you give my daughter money, I will tell people your brother-in-law molested my son. He felt shocked and disgusted. When challenged whether she said, "tried to molest" or "he molested my son", he could not say with certainty. He denied saying to his sister (Ms D) that Witness B's mother said she would have something interesting to say or have an interesting story to tell. In cross examination he agreed that Witness B's mother had not asked him for money nor did she say she would lie, rather she was just going to say this happened.

Mr. E testified he did not know how to deal with this so he called his lawyer, called Ms D and Dr. Taliano and told them about Witness B's mother's threat. He did not tell them at the hospital as testified by Ms D. He thought this was a big deal. He testified that if his sister (Ms D) said she was present when he called his lawyer, she would be mistaken.

Mr. E agreed that sometime in 2016 or 2017, Dr. Taliano informed him of the College investigation into alleged sexual abuse of a patient. He testified that he thought he asked Dr. Taliano by way of follow-up what the result of the investigation was about six

months later. He thought it was in the summer or fall of 2018 that he heard from Dr. Taliano about the investigation of molesting Witness B. He learned he may be questioned later that fall.

In his interview with the College investigator in March 2019, Mr. E said that he had been to the cottage hundreds of times, and when challenged on this point he claimed that this was a figure of speech. He described his relationship with Dr. Taliano being “better friends than most ex-brothers-in-laws”; he explained that was true at the time of the interview but that there had been a rift since the summer of 2019 such that the current relationship is quite cool.

When asked in the College interview who was present at the time of the cottage incident, he could not remember whether Witness B’s brother or Witness B’s mother were there. This was inconsistent with his evidence at the hearing which was more detailed in that he testified Witness B’s mother was there that weekend. On cross examination, he agreed that Witness B’s mother along with Witness B’s brother and sister would have left in the evening.

Mr. E agreed that he did not see what happened between Witness B and Dr. Taliano and that, while in the vicinity, he could not recall whether he was drifting from bedroom to bedroom, milling about or getting ready. He agreed he recalled Witness B coming out of the shower and saying, “John pulled the curtain or opened the shower, or something to that effect”. He recalled the mood being lighthearted. He testified that he did not recall his then wife (Witness B’s sister) being upset. When it was put to him that he told the College investigator that she was upset, felt it was inappropriate what Dr. Taliano had done, he responded, “Perhaps”. When asked if his response to the College investigator was true, he replied, “Yes”.

Mr. E testified when he heard about the allegations, he discussed the situation with his sister, Ms D. He probably told his sister about the College interview later that day. When asked by College counsel whether he ever discussed what he remembered with his

sister, he responded, “No”. He then clarified that when Witness B’s mother confronted him, they probably had a brief discussion of the allegation of molestation which he described as “bullshit”. He was not concerned that Witness B’s mother would go to the police because in his mind they both knew that it was a “crock of shit”.

When questioned about his memory of the 2011 weekend, he said that one reason it sticks out is because of “the attempt at blackmail” occurring a year later. He testified he negotiated a settlement with his then wife, she moved out and the offer was not made as a result of blackmail.

Mr. E testified that Dr. Taliano was a joker, polarizing, which he explained as “having no filter” and a bit eccentric. Mr. E agreed Dr. Taliano would say what is on his mind even if others might think it inappropriate. When questioned about a comment made by Dr. Taliano on Witness B’s penis size, he denied hearing such a comment.

He denied any conversation with Witness B’s mother several days after the weekend that Witness B or his brother should never be alone with Dr. Taliano.

Testimony of Patrick Keane

The Committee also heard briefly from Patrick Keane. Mr. Keane is a College investigator. He attended at Dr. Taliano’s cottage on October 22, 2019. He made a floor plan, took measurements and took photographs. He testified with respect to these and to his general impressions with respect to the size of the shower and the vantage points in the house.

Credibility and Reliability of Witnesses

Witness B

Witness B gave his evidence clearly and responded to questions directly. He admitted being unsure on a number of points. He was consistent in his description of when and what transpired during the shower incident. He used uncomplicated language and the Committee found him to be honestly doing his best to respond to questions. He became emotional when he described the shower incident. He appeared to be embarrassed by the episode and broke down several times.

He did not embellish his evidence. When he made errors with respect to his recollection of events (i.e., shower curtain vs door) or where his evidence was inconsistent with that of others (i.e., did he disclose the incident with Dr. Taliano to Ms C at his house or her house?) he admitted the inconsistencies and did not try to make excuses. These errors or inconsistencies were never embellishments. He did not try to obstruct the release of email messages to Patient A or his friend Ms C. He readily admitted to use of recreational weed in recent years. He displayed no animus towards Dr. Taliano. The Committee did not accept that the divorce of his sister had any bearing on his evidence as he was not engaged in the marriage breakdown in any way. Further, by the time of the hearing all matters related to his sister's divorce appeared to be settled.

He had a poor recollection as to when he first spoke to his mother of the incident; he was imprecise on dates which the Committee accepted as not unusual given that his focus appears to have been on what happened and not when it happened.

We address the internal inconsistencies in his evidence as follows:

(i) The shower set up

Witness B testified in chief that there was a shower door. He was confronted with evidence that there was no door (as demonstrated in a photograph) rather a curtain. Further, the shower head was fixed high on the wall and not on the ceiling as was implied in his evidence that the water came from above.

Whether it was a door or curtain, the result was that one could not see inside when the curtain was closed. He admitted that he was wrong about the door. His memory on this point was not precise and he admitted that to be so. The Committee concluded that whether it was a door or a curtain was simply not important to him. What was important was what happened in the shower and this explains why his recollection was incorrect.

ii) Inconsistency in witness B's testimony and investigator's notes

Witness B in his interview with the College investigator did not disclose that Dr. Taliano had touched his penis. Witness B explained that he was embarrassed and ashamed and had not revisited the incident in detail before attending the interview. He was also very upset during his interview with the College investigator and broke down crying. The Committee accepts his explanation. He was teenager at the time of the incident. The incident was deeply upsetting to him. This was apparent when he testified. He had not previously disclosed the details of what occurred - even to those close to him. In light of this, we do not find that there was any intent to deceive the investigator nor any attempt to embellish his account of what happened at the hearing. It is not surprising that Witness B felt uncomfortable disclosing these details to a stranger during the interview with the College, especially in light of the fact that he had not initiated communication with the College and had made no complaint to the College. We do not find that this omission negatively impacts on his credibility.

iii) Who was present and where were they when Witness B informed them (in part) of what had just happened in the shower?

Witness B testified that he came down the stairs and told those in the living room that Dr. Taliano had just gotten in the shower with him. His recollection of who was present, where they were (i.e., living room vs deck) or what they were doing at the time (i.e., watching "Iron Man") was not consistent with his sister's evidence. We find that these inconsistencies must be considered in light of his distress and shock at what had just occurred in the shower. Further, it was a busy weekend with a number of people

around, presumably moving in and out of rooms. Under such conditions, it would be difficult to have precise recall of these types of details especially given the passage of time. The Committee had no doubt that “Iron Man” was watched during the weekend but we could not rely on Witness B’s evidence on exactly when (evening, morning or both). The Committee does not find that any inconsistencies as between his evidence and that of his sister with respect to where he was when he disclosed that D. Taliano had gotten into the shower with him, or what others were doing, reflect negatively on his credibility with respect to what happened when he was in the shower.

iv) When Witness B told his mother about what happened in the shower

Witness B’s evidence about when he informed his mother of an incident with Dr. Taliano was inconsistent. We accept that, as he admitted to the Committee, he simply does not know for sure. It was not something that he recalled directly as it (the date) appeared to be unimportant. There was no question that he did tell his mother at some point; but he had no clear memory as to when he told her. Again, given his age at the time, his upset at the incident, and the passage of time, the Committee does not find this to be a material inconsistency. The Committee has no difficulty believing that a 13 year-old boy may not recall when he told his mother. That may not have been an important detail to him and therefore he would have been more likely to forget it over time.

The Committee found Witness B to be sincere, firm and consistent on when he took the shower and what happened during the time he alleges Dr. Taliano entered the shower. We find his overall evidence to be credible. His reliability was modestly diminished with respect to his evidence on dates and the specifics of his disclosure as discussed above, but we found him credible in his account of what happened in the shower.

Witness B’s Sister

The Committee finds Witness B’s sister both credible and reliable. She responded directly to questions and admitted when she could not recall specific details. She was

internally consistent on the important points, namely, when the shower took place and her description of the conversation after the shower. Her description of the response of those present when Witness B said what happened (laughter and nervous laughter of Witness B and her sense that he was unsure about what to make of what had just happened) and her concern about what her mother would think rings true to what might be expected in the circumstances. There were no internal inconsistencies in her evidence except as addressed below. The divorce from Mr. E did not, in our view, provide any motive for revenge. We accept that Witness B is her brother and there may be some degree of family allegiance but there was nothing to suggest collusion; indeed, the very fact that there were some inconsistencies between her evidence and her brother's evidence speaks to the absence of collusion and is consistent with Witness B's evidence that he did not speak to her before the hearing.

Her evidence is consistent with Witness B's, except for details involving the setting (deck or living room) where she heard him speak of Dr. Taliano getting in the shower with him and what Witness B was doing before he took a shower. We consider these minor and they did not detract from her credibility or reliability. External inconsistencies with the evidence of her ex-husband (Mr. E) will be addressed later in our analysis.

Dr. Taliano

The Committee had reservations about both the credibility and reliability of Dr. Taliano. His testimony was internally consistent on the issue of what happened in the shower and when it occurred. There were a number of external inconsistencies, however, both with College and defense witnesses which we will address in our reasons.

The thrust of his evidence was often to shift the focus from what he considered to be a non-issue (i.e., the shower incident) to the threat to his family posed by Witness B's mother. The Committee understands that someone in Dr. Taliano's position, if facing a false allegation, might be defensive; however, his evidence went beyond this and appeared at numerous times to be purposely exaggerated, contrived, or misleading:

- Dr. Taliano testified that it was reported to him that Witness B's mother said, "If you don't do right by my daughter and her divorce, I will make your brother-in-law's life hell over the shower incident". Mr. E did not say anything about Witness B's mother threatening to make his brother-in-law's life hell over the shower incident.
- He used every opportunity to deflect the issue from the shower incident to the perceived threat made by Witness B's mother. He described Witness B's family as "despicable people" and accused them of extortion. When asked about who was present at the cottage on Labour Day 2011, he responded, "I want to add that my recollection is heightened. I mean normally I wouldn't know what I did a month ago on the weekend. But, because some threats were made by [Mr. E]'s mother-in-law—I started reviewing, okay, what happened on that weekend...my memory is clearer than it would normally be".
- He exaggerated his descriptions, i.e., when he was asked if anyone took a shower after being at the beach, he responded "Well, yes, multiple people did". But there was no evidence anyone had a shower. He referred to Witness B's sister's evidence as a "clever lie". When he was asked about touching Witness B, he responded "It's so preposterous. I can't bring myself to even answer these questions". He described the long shower as, "Wilfully damaging his property".
- In describing his talk to Ms D and Mr. E he said, "Just in case they—you know, they tried something; we talked about how it was nothing". If it truly was nothing then it should not have needed to be discussed.
- His evidence was characterized by self-serving comments and sarcasm. In his response to counsel, he called the allegations preposterous and hoped counsel was just saying this as it was her job. The tone of his response was clearly sarcastic. He was obviously trying to deflect attention.

In respect to collusion, Dr. Taliano admitted that he discussed the event a lot with Ms D and Mr. E up to the time legal counsel said not to. Terms such as “molested”, “non-issue” and “extortion” factor in the evidence of all three witnesses. These terms were not used by Witness B or Witness B’s sister. There was no doubt in the Committee’s view that his narrative flowed from the discussions with his now ex-wife and brother-in-law. We did not find him credible or reliable on this matter.

Ms D

The Committee had concerns with both Ms D’s credibility and reliability. Her responses to direct questions were often indirect and resulted in her explaining why her version of events was correct. She was able to recall some details and not others. For example, she was definitive about when the shower took place, what she could observe, what she heard and the timing of the warnings. By contrast, she could not remember who stayed overnight and she was inconsistent in her recollection regarding what Witness B’s mother said (or did not say) about the shower incident. Her evidence in direct examination appeared rehearsed and inconsistencies appeared in cross examination. Whenever she had the opportunity she criticized Witness B’s mother.

It was clear to the Committee that Ms D would be affected by a negative outcome, not the least of which was concern for the effect on her daughter. She had motive to encourage the narrative put forth by her former husband, both personally and financially.

She downplayed the shower incident. She described the shower commotion as a “simple request”, when both her brother and Dr. Taliano’s evidence was it was more than a “simple request.”

She demonstrated animus to Witness B’s mother, in particular, and to Witness B as illustrated:

- She accused Witness B's mother of passively attacking Dr. Taliano and that she (Witness B's mother) also attacked her brother. She described Witness B as ignorant, rude and as taking advantage of their hospitality.
- She accused Witness B's mother of extortion, said that Witness B's mother targeted Dr. Taliano socially and said she was always uncomfortable in her presence.

She made a number of gratuitous comments (i.e., that Dr. Taliano helped Witness B's sister out after the divorce; that she assumed Witness B's sister was paid off, that her only objective was to take the truth forward) which appeared aimed to paint Dr. Taliano and herself in a favourable light and others in a negative light.

There were significant internal inconsistencies in her evidence as follows:

Testimony of Ms D vs investigator's report

- During the interview in March 2019, Ms D responded that Witness B's mother made absolutely no comment at the time of the alleged shower. She made this statement in response to a question that in the Committee's view was clear. She gave conflicting testimony before the Committee that one of the reasons she had a clear memory of the weekend was that Witness B's mother had made a comment which was upsetting and that this was followed by a response by Witness B's sister which somewhat alleviated her concern. She had no reasonable explanation for her conflicting evidence except that she forgot given the circumstances at the time. This was not thought to be credible given the weight Ms D placed on those comments.
- Ms D told the investigator that the threat to Mr. E made by Witness B's mother occurred six months after the shower incident. She agreed she was mistaken. It

was clear from the evidence that the perceived threat came at the time of Mr. E's divorce from Witness B's sister which occurred later in the fall of 2012, a fact Ms D would have been aware of.

Inconsistent descriptions of discussions occurring between Ms D, Dr. Taliano and Mr. E

Ms D testified she, Dr. Taliano and Mr. E discussed the accusation in the hospital. Ms D then said it was not necessary and she did not recall discussing it with Dr. Taliano. She admitted it was a big issue. She also said after the threat she did not discuss what happened at the cottage with Mr. E; they only discussed the allegation and the "attempt at extortion". This in our view is a distinction without a difference. The allegation directly relates and was understood to be a shower incident. She testified that she assumed that they all remembered the same thing. When asked by counsel whether she had discussed the minutiae with Dr. Taliano and Mr. E she responded that they had several times. She went on to say that the only conversation she had with her brother was about an obligation to bring the truth forward.

The Committee found this conflicting and self- serving.

Whether she observed Dr. Taliano the entire time when he was upstairs

Ms D testified that Dr. Taliano came upstairs periodically and did this and that in the room. She did not know what he was doing. She was involved in her bedroom with the girls, putting a video in for them and relaxing away from company. Under such circumstances the Committee was not persuaded that she had eyes on Dr. Taliano all the time, and her certainty of his actions was an overstatement

Dr. Taliano stated he spoke to all the guests Saturday evening and recommended short showers, ideally "power showers" of two minutes. Dr. Taliano testified that the reason he entered the bathroom and spoke to Witness B was because he was taking too long of a shower. Witness B denied taking a long shower. Witness B's sister did not

remember the shower being long. Ms D stated the initial warning by Dr. Taliano was made after Witness B had been in the shower for 15 minutes and the second at 30 minutes. Dr. Taliano said the initial warning was at 20 minutes with the second warning 10 minutes later. Later in his testimony, he corrected himself and said the initial warning was at 15 minutes with the second warning 10 minutes later. The Committee was struck by the fact that Ms D had such a specific recollection regarding the length of the shower and the timing of the warnings and that her recollection was so similar to that of Dr. Taliano. If the shower was so innocuous, why would she remember these details when the allegation did not surface until many months later during her brother's divorce?

On the basis of hearing her entire testimony and considering the above, the Committee has serious reservations both on her credibility and reliability.

Mr. E

While the Committee found Mr. E to be credible, for the most part, there were significant events where we did not accept his evidence as will be explained below.

Mr. E recalled the weekend that his wife's family came to Dr. Taliano's cottage. He believed it was the first and only time his wife's family came to the cottage. He testified that he spent the whole first day with Witness B, tubing, jet skiing and hanging out at the beach. He testified that on coming up from the beach everyone expressed an interest in taking a shower, but this appeared to be a slight exaggeration as there was no evidence that anyone else took a shower the first day. He could not recall who showered first, but he recalled that Witness B took a shower. He testified that he was either on the stairway or up on the landing while Witness B was showering. He testified that he heard Dr. Taliano say, "Get the hell out of the shower" to which he afterwards heard a shriek and that was all he heard. He then saw Dr. Taliano coming out of the bathroom wearing a bathing suit. He testified that he could also have been wearing a tank top but he was not wet. He then heard Witness B afterwards say, "Oh, John opened the curtain."

There was a significant inconsistency in Mr. E's description of his then wife's reaction when she was told by Witness B about the shower. He testified that she was not upset; however, earlier in the investigator's report he said she was upset and that this related to events immediately following the shower.

There were external inconsistencies with the evidence of Ms D relating to when Mr. E informed Ms D and Dr. Taliano about the potential threat and what was said.

The Committee does not believe that Mr. E intended to misrepresent the events of the Labour Day weekend by his testimony as to when the shower occurred, what he believed he heard or saw. But it is clear, he had very little recollection of the details from that weekend; and that he had no reason to even consider the weekend until a year later. He then turned his mind back to these events and pieced together what occurred through his discussions with Dr. Taliano and his sister.

THE ISSUES

Did Dr. Taliano engage in disgraceful, dishonourable or unprofessional conduct in August 2011 by entering a shower naked, touching Witness B or later making a comment about Witness B's penis size?

Facts Not in Dispute

- Witness B, who was not a patient of Dr. Taliano, attended a cottage at Port Colborne owned by Dr. Taliano on the Labour Day weekend in 2011. Witness B was 13 years old at the time.
- In addition to Witness B, those present included his family (his mother, his sister, another sister and brother) and the Taliano family (Dr. Taliano, his then wife Ms D, her brother Mr. E, and Dr. Taliano's daughter). There may have been several others present but they are not relevant.

- Witness B's family had been invited to the cottage for the day.
- Both families spent the day at the beach, enjoying boating, water sports and other beach-type activities.
- Around 4-5 pm, they left the beach and came back to the cottage whereupon Dr. Taliano gave a talk about the need to take short showers and to be mindful of water usage, as the septic system was a problem.
- Witness B had a shower in the upstairs bathroom sometime that weekend.
- No complaint to the College was ever made by Witness B, his mother or any other family member.
- Witness B disclosed an incident he said occurred in the shower that weekend to his girlfriend at the time (Ms C) in or about 2013.
- The incident came to the College's attention because of an investigation into another matter.

Sub issues to be decided:

1. Did Witness B stay overnight at the Taliano cottage and if so, how did that come about?
2. Did the "shower incident" take place in the afternoon or the next morning?
3. What happened in the shower?
4. What transpired immediately after the shower, including comments made?
5. Were there any actions taken in the immediate aftermath?

6. What happened in the 2012 meeting between Witness B's mother and Mr. E and is it relevant?

1. Did Witness B stay overnight at the Taliano cottage?

The Committee accepts that Witness B's family was invited for the day and stayed until later in the evening.

When asked how the evening ended, Witness B's sister testified that Witness B was invited to sleep over. She could not recall whether it was Dr. Taliano or his wife who invited him. She testified that this resulted in some discussion involving Witness B's mother as she was concerned that he may waken at night as he had been subject to night terrors, but she agreed to let him stay. Witness B's sister testified that she, Mr. E, Witness B, Dr. Taliano, his wife Ms D and daughter stayed that night, and everyone else went home.

Witness B testified that he and his sister stayed overnight; his mother, brother and one sister left at the end of the first day; he left around 1:00 pm the next day. The fact that Witness B could not specifically recall who drove him to the cottage did not, in our opinion, detract from his evidence.

Ms D testified that she could not recall if Mr. E, Witness B's sister or Witness B stayed over. She then proceeded to comment that Witness B could have asked to stay.

Mr. E testified that the next day he drove home with Witness B's sister and Witness B.

There was no hesitancy displayed by Witness B, Mr. E or Witness B's sister in giving evidence, or anything else that would suggest a poor memory for who stayed overnight. Their evidence is consistent on this point. The statement from Ms D that Witness B could have asked to stay was viewed as highly unlikely if one believes the evidence from Ms D and Dr. Taliano that he was asked to get out of the shower, as one would

expect that he was embarrassed if nothing else. Certainly, on Witness B's evidence, it is highly unlikely he would have asked to spend the night if in fact the shower incident had happened on the first day. We could not rely on Ms D's memory of who stayed over or how that came about; her added comment seemed self-serving.

The Committee, after reviewing the evidence and our assessment of the credibility and reliability of the respective witnesses, concluded that Witness B was invited by either Dr. Taliano or his wife (Ms D) to stay overnight at the cottage. He did so and left the next day with his sister and her then husband Mr. E.

2. Did the "shower incident" take place in the afternoon or the next morning?

All of the witnesses testified on whether Witness B took a shower in the afternoon or the next morning; there was no dispute that he did have a shower sometime that weekend.

Witness B testified that he woke up in the morning in his underwear, put on some pyjamas, walked to the washroom and took a shower. Witness B testified that he did not take a shower on the first day. He was consistent in his evidence that he had a shower the next morning after he woke up.

While his memory of some events occurring that weekend was not precise, i.e., regarding exactly when the movie "Iron Man" was watched, he specifically denied that it was possible that he showered the first day.

Witness B's sister testified that she probably did not have a shower that first day or evening. She testified that neither her mother nor her brothers (Witness B and his brother) showered the first day. She testified she recalled being out on the deck with Mr. E the next morning. She could not remember whether Dr. Taliano or Ms D were there. She recalled that Witness B was shooting an airsoft gun at cans and then went to take a shower.

We accept both Witness B and his sister to be credible in respect to the timing of the shower. While there is discrepancy as to what exactly preceded the shower, i.e., whether Witness B came down and was shooting and then went to shower or whether he went directly from his room, the Committee did not find this diminished their respective credibility. We accept that at some point during the weekend, Witness B did shoot at cans with an airsoft gun. In our view, this inconsistency in peripheral details after nearly ten years is consistent with simply fading memory.

Dr. Taliano testified that he had a recollection of the 2011 Labour Day weekend. He remembered giving the talk to his guests about the septic system. He did not shower after coming from the beach. He testified that the girls always showered though this was never affirmed. He was absolutely sure that Witness B showered in the afternoon. Dr. Taliano testified that his memory was heightened because of the threats made several months (actually more than a year) later which caused him to have a better memory. He stated that normally he would not know what he did a month ago on a weekend. He testified that there were three showers in the cottage, the main bathroom upstairs, an ensuite off the master bedroom and a further shower on the lower level. They could be used together but the pressure would be reduced. The problem was not availability of water but the septic system.

Dr. Taliano's wife, Ms D, testified that the families gathered in the living room after the day at the beach. She was aware that they all would want to get out of wet bathing suits and into fresh clothes. She did not know whether any people expressed an interest in showering. She testified that Witness B went to take a shower first, using the guest bathroom on the second floor. She testified she went to the master bedroom with the girls; they were planning to shower next in her ensuite. She testified they could not shower at the same time because there was poor water pressure. It was not established whether the girls actually showered or not. Ms D described the shower as a non-issue and that she recalled it because of a reaction of Witness B's mother, who she alleges said, "Should I be concerned about what went on upstairs?" This directly contradicts

what she told the investigator. She did not think of it again until the Fall of 2012 when she heard of the attempt to extort money from Mr. E.

Mr. E testified that after spending the day at the beach, upon returning to the cottage, everyone either had a shower or expressed an interest in doing so. He did not recall who showered first. He testified that Witness B took a shower and that this took place in the afternoon. He said he had "a pretty clear memory" because that is the usual routine. He considered this shower to be a non-issue as did his sister which was not mentioned on the way home or at subsequent family gatherings. His memory was vague on a number of issues including where they had dinner and who was present, specifically, whether Witness B's mother and brother were there. In his interview with the investigator, he stated in all honesty that he could not remember whether her other sister or her mother were there. He testified that if his mother-in-law were there, he would have been upstairs to avoid conversation. When questioned directly about whether his mother-in-law was there that weekend he responded yes. He did not respond to the more specific question as to whether she was there during the shower. Mr. E testified that one of the main reasons that he recalls the events of the weekend was because he associated it with an attempt at blackmail.

It was clear to the Committee that Dr. Taliano, his wife and brother-in law did not give the question of details about the shower any thought whatsoever in the year following the 2011 Labour Day weekend. Each used the term non-issue to describe the shower incident. It was only when the perceived threat to Mr. E was made in the Fall of 2012 that they revisited the events of that weekend. Dr. Taliano testified that the three of them had discussed what happened and he was relieved when his wife told him she had observed what happened. He claimed he could re-create or remember something important. He claimed he did not create but used his memory and agreed this was in conjunction with the memory of events of his ex-wife and brother-in-law. Ms D testified she and her brother talked and that the three of them had discussed the accusation. She went on to say that she did not recall discussing what happened at the cottage with Dr. Taliano, saying it was not necessary. She also said she did not discuss what

happened at the cottage with Mr. E as there was no need, nothing happened. In cross examination she was more explicit, saying they had discussed the minutiae several times including where they were at the time, where Dr. Taliano was and what she observed. Mr. E testified that at the time of the incident, his relationship with Dr. Taliano was better than most brothers-in-law.

In the view of the Committee, the evidence from these three witnesses does not reflect their independent recall but rather a construction of the events as they believed them to be. There was a striking similarity in the words used by these three witnesses suggesting a significant degree of collusion i.e., non-issue, extortion, molestation, and expressing an interest in taking a shower.

In making our decision as to when the shower occurred, we also considered the events occurring later that evening. We accept that Witness B was invited to stay over at the cottage and that he would have been invited to do so by Dr. Taliano or his wife. It is their evidence that following the shower, Dr. Taliano was angry, mad and annoyed by the length of the shower. He viewed Witness B as willfully damaging his property. Ms D testified she thought Witness B was taking advantage of their hospitality and that it was an ignorant thing to do. In the view of the Committee, it would be highly unusual in these circumstances for the Talianos to invite Witness B to prolong his visit. Further, had Witness B's mother been present and concerned about a commotion as Ms D has testified, it would be unlikely she would have consented to her son sleeping over as she did. Further, it would be unlikely that Witness B, having been embarrassed (on Dr. Taliano's version of events regarding the issue in the shower) would have wanted to spend the night.

The Committee concluded that the preponderance of the evidence supports that Witness B took a shower not in the afternoon but, as he and his sister have testified, on the morning after. We base our finding on the following:

- The consistent evidence of Witness B and his sister, which we accept.

- Dr. Taliano's own evidence that normally he would not recall what happened on a weekend a month ago (let alone a year ago) and evidence that he discussed the events with his wife.
- Our assessment of Ms D's evidence which is based on her tenuous memory (i.e. not recalling who stayed overnight or what Witness B's mother may have said), her consultation with Dr. Taliano and Mr. E on the events of the weekend and the inconsistencies in her evidence.
- The evidence of Mr. E which demonstrates that he has a limited recollection of the shower events, and importantly whether or not Witness B's mother was present at the cottage during the shower, and the fact that much of his testimony was based on assumptions as opposed to what he recalled. For example, he testifies that he assumed that he would be upstairs if his mother-in-law was downstairs and he assumed that everyone wanted to have a shower after the day at the beach.
- The Committee did not rely upon the evidence of Dr. Taliano, Ms D or Mr. E as to the shower occurring in the afternoon, given the fact that on their own evidence they had no reason to believe anything inappropriate had occurred until confronted by Witness B's mother during the divorce many months later and then discussed the shower incident together.
- The fact that Witness B was invited to stay overnight, when it is alleged he had clearly offended his host.
- Our respective evaluation of all the witnesses' credibility and reliability.

3. What happened in the shower?

Only two people know exactly what went on in the shower during the incident that we accept occurred the next morning. We first deal with Witness B's description and then the version of Dr. Taliano. Where the evidence of Mr. E and Ms D relate to events concurrent with the shower incident, we will address and give weight where indicated.

Witness B testified that when he took the shower, he shut the upstairs bathroom door. He describes the shower curtain/door being opened. Dr. Taliano was standing there naked and got into the shower with him. Witness B was able to describe Dr. Taliano's appearance as pudgy and his genitalia shrunken using an analogy with the Penguin in the Batman movie. Witness B testified that Dr. Taliano made comments about the need to share showers to conserve water, which he interpreted as a joke. While the soap was still running off his hair Witness B testified that Dr. Taliano rubbed the soap off Witness B's chest and his hand passed over and rubbed his penis. It was not until that point that he was aware that this was not just showering with him as men may do in a locker room. He appeared sincere and did not appear to exaggerate; in fact, he specified this was not a jerk off motion. He said he was shocked. Dr. Taliano remained in the shower with him only for 20-30 seconds. Witness B denied being aware that he had been asked to hurry up or was yelled at to get out of the shower. The Committee found Witness B to be sincere.

Dr. Taliano testified that at some point he was aware that Witness B had been in the shower a long time (around 20 minutes). He went to the bathroom, stuck his head in the door and told Witness B he had to get out. He said that he did not have to open the door as it was ajar. When revisited in cross-examination he agreed it was possible the door was closed. Dr. Taliano testified he left the door ajar to let the steam out and signal that shower time was over. He went back about 10 minutes later, opened the door and went into the bathroom. He testified that he pulled back the curtain and said "[Witness B] you don't know how dangerous it is. If you are not out in two minutes I am going to pull you out". He described this as a stern warning but not menacing. Witness B responded, "Get out". He opened the curtain far enough that he could get his head in and saw the backside of Witness B. He testified that he was wearing a bathing suit. He described

this as a commotion. He testified that neither he nor Witness B made any comments about this afterwards.

There is little common ground in these two descriptions. The Committee was persuaded that Witness B was truthful in his evidence. His detailed descriptions including Dr. Taliano's excuses for sharing a shower and details of Dr. Taliano's genitalia are examples. His description of being shocked is apt in the circumstances. As the shower was running and his head was covered in soap and water, it is reasonable that he would not have heard a warning or the order to leave the shower.

Dr. Taliano's testimony regarding what he said minimizes the fact that he says he was angry and considered Witness B to be willfully damaging his property. Any commotion, it appears resulted from Dr. Taliano's warning and Witness B's response. Witness B testified that he did not hear any warning. Dr. Taliano relies on the evidence of Mr. E and Ms D to support his version of events.

Mr. E testified that he was on the landing or stairs while Witness B was in the shower. He heard Dr. Taliano say "Get the hell out of the shower" following which there was a sort of shriek. He observed Dr. Taliano leave the bathroom and noted he was wearing a bathing suit at the time. While the Committee had no doubt that at some time during Witness B's shower Mr. E was on the stairs and landing, we doubt he was there the entire time given the evidence of Dr. Taliano that the shower lasted 30 minutes or more. Indeed, he clarified in cross-examination that he was in the vicinity and did not see what happened between Dr. Taliano and Witness B. Mr. E testified that he could not recall whether he was drifting from bedroom to bedroom, milling about or getting ready. Mr. E stated that the bathroom door was always open which is clearly an overstatement. The Committee did not find his evidence helpful. We accept that Mr. E may have heard Dr. Taliano's warning to get out of the shower, but we did not conclude that this was inconsistent with the possibility that Dr. Taliano could have entered the shower as Witness B testified.

Ms D testified that while Witness B was in the shower, she was in the master bedroom with a couple of the children. At some point, she saw Dr. Taliano come upstairs, he rapped on the bathroom door, poked his head in and said something to the effect of hurry up, you've been there long enough. She claimed seeing the bathroom door ajar and after 30 minutes, she went to get towels from the foyer and saw Dr. Taliano enter the bathroom. She testified she saw him open the shower curtain 4-6 inches and heard him say, "Get out of the shower or I am going to haul you out". She testified Witness B responded, "Get out". She testified that she saw Dr. Taliano come out of the bathroom and she that was on the landing the whole time.

The Committee accepts that there may have been some commotion and that Witness B may have been in the shower a long time, though that is not his evidence. That does not, however, undermine the evidence of Witness B who may have been unaware of the rising ire of Dr. Taliano and his wife. Their evidence is that Witness B was in the shower for at least 30 minutes and for much of that time the door to the bathroom was likely closed as testified by Witness B and accords with common sense. While much time was spent on ascertaining that Ms D could see the bathroom door and if open, could see inside from a position in the doorway of the master bedroom, it was clear that if she was inside the bedroom or in the ensuite she could not. We are not of the view that Ms D was watching the bathroom door during the entire shower and we placed little weight on her evidence overall. In our view the evidence suggests that Dr. Taliano and Ms D discussed their respective descriptions of what transpired and reconstructed the events to accord with their narrative.

The Committee finds the evidence of Witness B to be persuasive and finds that it is more likely than not Dr. Taliano pulled open the shower curtain while Witness B was taking a shower. Dr. Taliano was naked at the time and stepped into the shower, and rubbed the soap off Witness B's chest and touched Witness B's penis as was alleged. We accept that Witness B shut the bathroom door when he went in to have a shower and there were no witnesses to this encounter. We place no weight on the evidence of Ms D, in particular the assumption that she observed the event in question. This

conclusion does not preclude that at some time during the shower, Dr. Taliano may have opened the bathroom door and warned Witness B about the length of the shower.

4. What transpired immediately after the shower, including comments made?

Witness B testified that after the shower he was shocked; the next thing he remembered was standing on the staircase telling those present and sitting in the living room (his sister, Ms D, Mr. E, Dr. Taliano's daughter, he could not remember if Dr. Taliano was there) that Dr. Taliano had got into the shower with him. He did not say that Dr. Taliano had touched his penis. He admitted to being nervous and embarrassed and did not divulge any further details. He admitted being very confused. He did not tell anyone else immediately after the shower. He stated his sister did not appear to take notice. He went back to his room to continue to pack.

Witness B's sister testified she recalled being out on the deck with Mr. E the next morning. Next, she recalled Witness B coming to her and telling her that Dr. Taliano had got in the shower with him. She testified Dr. Taliano laughed and told Witness B they had to share showers to conserve water at the cottage. She recognized this as a joke. Mr. E and Ms D laughed and said "John" like that was inappropriate. Dr. Taliano then said something like Witness B had a large penis and it made him feel inferior. There was more laughter. She described Witness B as laughing nervously and seeming unsure as if he was looking to her to say it was okay. She remained quiet, trying to make sense of it all and what her mother's reaction would be. It was put to her in cross examination that Witness B said, "John opened the curtain on me" and she responded that is absolutely not true. She recalled Witness B saying that Dr. Taliano got into the shower with him.

Dr. Taliano testified that neither he nor Witness B made any reference to the shower incident after the fact. He denied the penis remark calling it a "clever lie". Dr. Taliano said the shower was a non-issue and they carried on and went out for dinner. In fact,

the Committee accepts that the families did not go out for dinner, but rather had a BBQ and bonfire. Indeed, had they gone out for dinner, the shower would make more sense.

Ms D testified that she was upstairs when Witness B was showering. When Dr. Taliano went into the bathroom, Witness B's family were in the living room. Ms D testified she overheard Witness B's mother say, "Should I be worried about what is going on upstairs?" She heard but did not see Witness B's sister respond, "Of course not mom". She did not see Witness B leave the shower. She did not recall any conversation about the shower and did not hear Dr. Taliano make any comments about Witness B's penis. The Committee rejects that she overheard Witness B's mother's comment, as Witness B's mother had returned home the night before.

Mr. E testified that after Witness B got out of the shower, he heard him say "Oh, John opened the curtain". He did not hear Dr. Taliano make any comment about Witness B's penis. There was no mention of the shower episode on the drive home with Witness B and his sister.

The Committee prefers the evidence of Witness B's sister on what was said by Witness B when he came downstairs. Our view is that Mr. E's evidence was influenced by his discussions with Ms D and Dr. Taliano. Further, in the narrative as put forth by Dr. Taliano, it would be unlikely for Witness B to speak out about an incident that at most would just have embarrassed him.

The Committee accepts the evidence of Witness B's sister and Witness B and finds it to be consistent and truthful. The evidence of Dr. Taliano, Ms D and Mr. E is contradictory on what, if anything was said after the shower incident and we do not find their evidence believable. As we have stated, Witness B's mother was not present at the time of the shower, having left the evening before; we do not accept the evidence of Ms D and consider it fabrication.

Whether Witness B was on the stairs or came to his sister to tell her what happened is not material or reflective of a meaningful inconsistency. Whether Witness B's sister was on the deck or in the living room is likewise of no moment.

The Committee also accepts that Dr. Taliano made a comment about Witness B's penis. We base this on our assessment of Witness B's sister's credibility despite the lack of confirmation of Mr. E, Ms D, or Witness B. It is a comment which is inappropriate. We note the comments of Ms D and Mr. E regarding Dr. Taliano as being unfiltered, with an "odd" sense of humour, rarely inappropriate but different and pushing the envelope a bit. We considered this not to besmirch Dr. Taliano's character but to comment that their observations are consistent with Dr. Taliano making such a remark.

The Committee finds that Witness B came downstairs and told those present that Dr. Taliano entered the shower with Witness B. The Committee also finds that Dr. Taliano made a comment about Witness B's penis. We did not consider the evidence of Dr. Taliano, Ms D or Mr. E to be credible on this point. Their evidence was inconsistent in substance, appeared contrived, and runs contrary to our determination that the shower occurred the next day at a time when Witness B's mother was not present.

5. Were there any actions taken in the immediate aftermath?

Witness B's sister testified that, while not certain of the timing, within a day or two her mother came to speak to her and Mr. E. She told them that neither Witness B nor his brother should ever be alone with Dr. Taliano. She could not recall Mr. E's reaction.

Mr. E denied any conversation with Witness B's mother several days after the Labour Day weekend.

The Committee draws no conclusions about this exchange due to the dearth of evidence. We will make comments about the likelihood of such a conversation happening later in our reasons.

6. What happened in the 2012 meeting between Witness B's mother and Mr. E and is it relevant?

Witness B's sister testified that in the fall of 2012, when at a difficult stage in her divorce from Mr. E, she told her mother that Mr. E had done a number of things to make her life difficult. Her mother came over to their home and confronted Mr. E in the kitchen. Her mother told him to stop being a jerk and doing things that made life difficult and that if he didn't she would share his family secrets. Witness B's sister stated she was paraphrasing what her mother said. She understood the secret referred to Dr. Taliano getting into the shower with Witness B. She could hear what her mother said but did not observe the interaction. Witness B's mother did not testify.

Mr. E testified that Witness B's mother said to him, "Do right by my daughter". He went on to say that Witness B's mother was going to say that Dr. Taliano had molested her son. He considered this a threat and was shocked and disgusted. He was unsure when challenged whether Witness B's mother said he (Dr. Taliano) had tried to molest or molested her son. He agreed that Witness B's mother had not asked for money and she did not say she would lie; she was just going to say it happened. He called his lawyer then his sister and Dr. Taliano informing them of the situation. Mr. E denied he told his sister when they were in a hospital room with a family member as Ms D testified. Mr. E testified that if Ms D said she was present when he called his lawyer then she was mistaken.

Dr. Taliano testified that upon being told of this threat, he meditated and then clearly recalled the shower incident, notwithstanding that he considered it a non-issue occurring over a year ago. He also admitted that he discussed what happened with Ms D and Mr. E.

Ms D expressed concern upon hearing of the perceived threat. She testified that Mr. E had said that in an attempt to extort money, Witness B's mother had threatened to have

an interesting story to tell about what happened. She described Dr. Taliano as less concerned, attributing this to Witness B's mother just spouting off. She testified that if her child had been assaulted she would go to the police. Ms D testified that they were all at the hospital when Mr. E told them what had happened. She testified that her brother made the phone call to his lawyer and she was standing right beside him which directly conflicts with his evidence. We take note that while the collusion surrounds the discussion of the shower incident in 2011; it does not extend to circumstances arising subsequently. We accept Mr. E's evidence as he made the phone call and he indicated that his sister was mistaken. The fact that Ms D testified that she was "certain" she was present did not convince the Committee of the reliability of her evidence.

There was no question in the Committee's view that Mr. E, Ms D and Dr. Taliano knew at the time they received news of the potential threat that had been made by Witness B's mother that it was the shower incident at the cottage that was the issue. This was despite the fact that in their collective evidence the incident was a non-issue This undermines the assertion that they thought what had occurred at the cottage on Labour Day weekend a year ago was a non-issue, since they had no difficulty tying the threat to the shower incident.

The Committee concluded that with the unfolding of events, further inconsistencies emerged resulting in confirmation that Witness B and his sister's testimony on the subject was truthful. Dr. Taliano, Mr. E, Ms D were in our view careless with the truth. The fact that Witness B's mother made a threat is not the focus of this matter. No action was ever taken by Witness B's mother. Mr. E and Witness B's sister negotiated a divorce settlement that he testified was not as a result of blackmail.

Plausibility

The Committee considered in detail the evidence put forth, recognizing that there were a number of inconsistencies both internal and external which diminished the credibility and impacted on the reliability of witnesses. The Committee imposed a common sense

approach looking for a realistic narrative. The evidence we accept sets out a logical progression of events and strongly supports the version of events as testified by Witness B and his sister.

Witness B attended a cottage in 2011 with his family; he stayed overnight and showered the next morning. He shut the bathroom door. Sometime during that shower, Dr. Taliano entered the shower naked, and proceeded to rub the soap off Witness B's chest. In so doing, Dr. Taliano rubbed his hand over Witness B's penis. It was then that Witness B knew this was not appropriate. While in the shower Dr. Taliano said there was a need for shared showers to conserve water. The time spent together in the shower was brief. The bathroom door was shut for some time offering privacy and opportunity. After the shower, Witness B told those present that Dr. Taliano had gotten into the shower with him and laughter followed. Dr. Taliano made a remark about Witness B's penis size and again laughter followed.

Witness B left the cottage shortly after with his sister and Mr. E. He could not recall when he told his mother about what happened. Witness B's sister said that her mother came over a day or two after the shower incident and said that her sons should not be left alone with Dr. Taliano. This in our view is a common sense reaction.

Nothing further happened until there was pressure from Witness B's mother on Mr. E to stop making life difficult for her daughter during their divorce. At this point, the Talianos and Mr. E, whether intentionally or not, collaborated to develop a version of events .

No further action was taken by Witness B's mother or her family. It was only because Witness B told his girlfriend about what happened in the shower when he noticed pill containers with Dr. Taliano's name on the label, that the matter came to light. His girlfriend was the nexus with Patient A, and it was through this connection that Witness B was identified and investigated. No complaint to the College was ever made; rather this investigation and that of Patient A proceeded because of the failsafe mandatory

reporting required to ensure that sexual abuse in the medical profession is properly addressed.

The same cannot be said for the narrative of Dr. Taliano, his wife and brother-in-law. Their evidence contains a number of significant gaps and inconsistencies. For the reasons set out, we cannot accept their evidence that the shower took place in the afternoon of the first day. It does not make sense. It is unclear who took showers that day, if any, especially after being warned about the septic problems.

It is not credible that Ms D monitored all of Dr. Taliano's actions during Witness B's 30-minute shower. There was ample opportunity for the abuse to occur. The collaboration of Dr. Taliano, Ms D and Mr. E is admitted. They agreed that they discussed what had happened. The potential threat of Witness B's mother, which never materialized, offered an opportunity to refocus and factored in a major way in the narrative they espoused. Their evidence contains assumptions, significant inconsistencies and frank contradictions. The Committee concluded their description of the events related to the shower incident was not reliable.

Conclusion respecting Witness B

The Committee finds that Dr. Taliano did enter the shower of Witness B while naked, and touched Witness B's penis. The Committee also finds that Dr. Taliano made a comment regarding the size of Witness B's penis in the presence of others.

These acts constitute 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, as defined in section 1(1)(33) of the Professional Misconduct Regulation made under the *Medicine Act, 1991*.

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

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. John Patrick Taliano, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that could disclose the identity of the complainants referred to orally or in the exhibits filed at the hearing under subsection 45(3) of the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

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

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

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

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

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

Citation: *College of Physicians and Surgeons of Ontario v. Taliano*, 2021 ONCPSD 17

Date: April 15, 2021

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. John Patrick Taliano

PENALTY ORDER AND REASONS

Heard: January 11, 2021, by videoconference

Panel:

Dr. Pamela Chart (chair)
Mr. John Langs
Dr. Dennis Pitt

Appearances:

Ms. Ruth Ainsworth, for the College
Mr. Eli Lederman and Mr. Robert Trenker, for Dr. John Patrick Taliano
Ms. Jennifer McAleer, Independent Legal Counsel to the Discipline Committee

Introduction

- [1] On October 22, 2020, we found that Dr. Taliano committed an act of professional misconduct, in that he engaged in the sexual abuse of a patient; and 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: *Ontario (College of Physicians and Surgeons of Ontario) v. Taliano*, 2020 ONCPSD 42.
- [2] We found that Dr. Taliano sexually abused Patient A, a 14-year-old boy, in a medical encounter on August 29, 2012, by touching his penis and testicles sexually under the guise of a genital examination. We also found that in 2011, Dr. Taliano entered a shower naked and touched the penis of a 13-year-old boy (Witness B), and subsequently commented about Witness B's penis size to others.
- [3] On January 11, 2021, we heard evidence and submissions on penalty and costs and reserved our decision. The central issues were whether Dr. Taliano's certificate of registration should be revoked and the amount of costs payable to the College. For the reasons that follow, we order that Dr. Taliano's certificate of registration be revoked and, among other things, that he pay costs to the College of \$124,440.

Submissions on penalty

- [4] The College sought an order:
- Directing the Registrar to revoke Dr. Taliano's certificate of registration effective immediately;
 - Requiring Dr. Taliano to appear before the Committee to be reprimanded within 30 days of the date the order becomes final;
 - Requiring Dr. Taliano to comply with the College's Policy, "Closing a Medical Practice";
 - Requiring Dr. Taliano to reimburse the College for funding provided to patients under the program required under s. 85.7 of the Code, and to post an

irrevocable letter of credit or other security acceptable to the College to guarantee payment of such amounts within thirty (30) days of the date the order becomes final, in the amount of \$17,370; and

- Requiring Dr. Taliano to pay costs to the College for each day of the hearing, for a total of \$124,440.

[5] Dr. Taliano sought an order:

- Directing the Registrar to suspend Dr. Taliano's certificate of registration for 12 months;
- Requiring Dr. Taliano to appear before the Committee to be reprimanded within 30 days of the date the Order becomes final;
- Requiring Dr. Taliano to comply with the College's Policy, "Closing a Medical Practice";
- Permanently restricting Dr. Taliano from engaging in any professional encounters, in person or otherwise, with any patient under 18 years of age;
- Imposing no costs or, in the alternative, costs of \$45,000.

Is revocation mandatory?

[6] The Code currently provides for mandatory revocation of a physician's certificate of registration for touching of a sexual nature of a patient's genitals (s. 51(5)3.(vi) of the Code). However, we must apply the version of the Code in effect at the time of the incidents.

[7] In 2012, s. 51(5) of the Code provided:

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. 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. encouragement of the patient by the member to masturbate in the presence of the member.

[8] Touching of a sexual nature of a patient's genitals was not specified as an act requiring mandatory revocation at the time Patient A was sexually abused, but masturbation did result (and continues to result today) in mandatory revocation. Consequently, one of the central disputes between the parties on penalty was whether we had found that the sexual abuse by Dr. Taliano of Patient A consisted of or included masturbation.

[9] Prior cases of this Committee discussing the definition / description of masturbation, include the following quotations:

- a. *Ontario (College of Physicians and Surgeons of Ontario) v. Iqbal*, 2015 ONCPSD 41

These patients described sexually stimulating actions performed by Dr. Iqbal, including repeated in and out movements of the rectum and vagina and in one case touching of the clitoris. They were violated in an intimate and most abhorrent manner. The Committee agreed with the submissions of the College that these actions constitute masturbation...

- b. *Ontario (College of Physicians and Surgeons of Ontario) v. Karkanis*, 2013 ONCPSD 14 (overturned on other grounds *Karkanis v. College of Physicians and Surgeons*, 2014 ONSC 7018)

The Committee also reviewed definitions of masturbation put forward by the College from various sources. These included the Latin root definition of masturbation from the 27th Edition Dorland's Illustrated Medical Dictionary which was "manus hand + stuprare to rape." This same source refers to masturbation as "the self-stimulation of the genitals for sexual pleasure." A further definition from the Oxforddictionaries.com website provided in part that masturbation was "[with object] stimulate the genitals of (someone)

to give them sexual pleasure.” These definitions show that there are various forms of behavior involving stimulation of the genitals that fall within the term “masturbation”. The Committee must determine whether Dr. Karkanis’ conduct constitutes “masturbation of the patient by the member” under the Code.

[...]

Dr. Karkanis was seeking to sexually stimulate the complainant’s genitals and that constitutes masturbation as far as the Committee is concerned. It does not matter that this was a relatively brief encounter, nor does it matter whether or not the patient enjoyed or derived pleasure from the activity. The Committee considers that it was precisely this type of conduct that was intended to be covered by subsection 51(5) of the Code. The Committee is of the view that this conduct is included within the type of conduct that the legislature was attempting to "eradicate" when it enacted the sexual abuse provisions of the Code, including the requirement for revocation of a member’s certificate of registration for masturbation of a patient by a member.

- c. *Ontario (College of Physicians and Surgeons of Ontario) v. Morzaria*, 2017 ONCPSD 48

Alone with Patient A, Dr. Morzaria touched, rubbed/stroked and played with Patient A's penis. Revocation of Dr. Morzaria's certificate of registration was mandatory in these circumstances under subsection 51(5) 3(iv) of the Code: "Masturbation of the patient by the member".

[10] We find that masturbation is the attempt to sexually stimulate the genitalia. Neither the patient nor the physician need experience any pleasure or arousal. Evidence of erection or other signs of sexual pleasure by either the physician or the patient is not a necessary component of masturbation.

[11] With this definition in mind, we turn to our findings of what occurred during the sexual abuse of Patient A. We accepted Patient A’s description of what occurred during the examination of his genitalia. We found as follows:

According to Patient A, Dr. Taliano then proceeded to “play with my balls and stroke my penis.” When asked to describe what he meant by “play with my balls”, he stated, “Just like moving them around, tickling them. Like, trying to get me off.” When asked to describe what he meant by “stroke my penis”, Patient A testified, “It’s like he was -- grasped around the shaft and he was moving it up and down, like you would if you were trying to pleasure yourself.” Patient A testified that while one of Dr. Taliano’s hands was on his

penis, the other hand was “cupping and tickling” his testicles, simultaneously. Patient A stated that Dr. Taliano did not say anything while he was doing this. “He was just looking up at me” - “He was looking, like, at my penis and testicles, and then he would look up at me.”

[12] Further, as described by Patient A, Dr. Taliano’s actions amounted to more than simply touching Patient A’s genitals in a sexual way. This was clearly masturbation of Patient A by Dr. Taliano.

[13] Consequently, we find that revocation of Dr. Taliano’s certificate of registration is mandatory pursuant to the provisions of the Code applicable at the time of the sexual abuse.

Revocation is the only appropriate order

[14] Alternatively, if we are incorrect in our characterization of the sexual abuse as masturbation, we would still order that Dr. Taliano’s certificate of registration be revoked as the only appropriate order.

[15] Revocation of Dr. Taliano’s certificate of registration is required to satisfy the principles of protection of the public, general deterrence of the profession, maintenance of the integrity of the profession and public confidence in the College’s ability to regulate in the public interest and denunciation of the misconduct. While specific deterrence and rehabilitation are also recognized penalty principles, which we take into account in this case, we conclude that revocation is the only appropriate order.

Least restrictive principle does not apply

[16] Counsel for Dr. Taliano submitted that the most serious penalties should be imposed in the most serious cases. We do not accept, however, that the most serious penalties should only be applied in the most serious cases.

[17] The Divisional Court has held in both *College of Physicians and Surgeons of Ontario v. McIntyre*, 2017 ONSC 116 and *Iacovelli v. College of Nurses of Ontario*, 2014 ONSC 7267 that the least onerous and least restrictive principle of sentencing from criminal law does not apply to discipline proceedings. In criminal law, an offender should not be deprived of liberty, if less restrictive sanctions may be

appropriate in the circumstances. The Divisional Court has held, “There is no equivalent statutory provision governing the imposition of penalties by a discipline committee, which is not surprising given that the central function of the discipline committee is not to ‘punish’ offenders, but rather to govern its members for the protection of the public.” (*McIntyre* at para 48).

[18] In *Ontario (College of Physicians and Surgeons of Ontario) v. Noriega*, 2015 ONCPSD 29, upheld on appeal 2016 ONSC 924 (decided before the Divisional Court clarified the issue in *Iacovelli* and *McIntyre*), this Committee considered the application of the least restrictive principle and concluded:

Counsel for Dr. Noriega submitted that, where a penalty short of revocation can satisfy the penalty objectives, this should be imposed consistent with the “principle of restraint”. This appears to be an accepted principle of sentencing in the criminal context, and has previously been referenced in some Discipline Committee decisions of the College, as in *Lee (re)* [2010], which quotes the Supreme Court of Canada in *R. v. Solomon*. The Court states in this case that [in the criminal context] a court should “impose the least restrictive sanction appropriate in the circumstances”.

Whether or not this principle is applicable in discipline cases, the Committee finds that in the circumstances of this case there is no penalty short of revocation that would adequately address the objectives of penalty. The principle of proportionality, and the crucial issues of protection of the public and maintenance of public confidence in the ability of the profession to govern itself in the public interest, compel the conclusion that Dr. Noriega’s certificate of registration must be revoked.

[19] We conclude that the least restrictive principle has no application in determining the appropriate order in this case.

Revocation is not a professional death sentence

[20] Counsel for Dr. Taliano submitted that revocation is tantamount to a professional death sentence and therefore revocation would have a disproportionate impact on Dr. Taliano and his family. The Divisional Court and several prior decisions of this Committee have held that this is not an appropriate characterization of an order of revocation.

[21] In *Seidman v. College of Physicians and Surgeons of Ontario*, 2003 CanLII 29890 (ON SCDC), this Committee stated:

[18] In his submissions, counsel for the appellant likened the penalty to “capital punishment” of the medical profession. In that regard, we reiterate the words of O’Driscoll J. in *Warnes v. College of Physicians and Surgeons of Ontario*, [1992] O. J. No. 3748 (Div. Ct.):

We do not agree with counsel for the appellant that a Professional death sentence has been pronounced. It will be up to the appellant to show the College, (if, as and when he does so) that he is fit to accept the onerous duties, the onerous trust and the onerous responsibilities undertaken by a person licenced as a physician and surgeon in the Province of Ontario. The future of the appellant’s medical life lies with him and with any committee to which he may apply.

[22] Revocation of the member’s certificate of registration is a serious penalty and we accept that there may be significant negative impacts on Dr. Taliano and his family. In *Noriega* the Committee noted:

The Committee considered Dr. Noriega’s personal circumstances as outlined by his counsel, and the letters of support from families of some of his patients, which were filed on his behalf. The Committee accepts that the revocation of Dr. Noriega’s certificate of registration will have very serious consequences for him. This is to be expected under the circumstances. Significant hardship could well result. This issue, however, is not a central concern of the Committee. The Committee is concerned with arriving at a just penalty which, in all the circumstances of the case, achieves the goals of public protection, maintenance of public confidence in the integrity of the profession, and specific and general deterrence. We note, also, that revocation is not necessarily a “professional death sentence”. Dr. Noriega will, in fact, be able to apply for reinstatement of his certificate of registration.

[23] We agree with the Committee’s comments in *Noriega*. We are not indifferent to the serious impacts revocation will have on Dr. Taliano or his family and punishment is not our objective. Our primary focus, however, must be on protection of the public, general deterrence and maintaining the integrity of the profession.

Aggravating Factors

[24] Both Patient A and Witness B were adolescents at the time of the incidents. Each was vulnerable. Patient A testified that Dr. Taliano had been his family doctor for a

very long time. Patient A (14 at the time of the incident) testified that he, his mother and sister often attended appointments together. Although Witness B (13 at the time of the incident) was not a patient, Dr. Taliano was in a position of trust and power as his older relative and host.

[25] Prior decisions of this Committee have held that physicians may find themselves in a position of power and trust with non-patients. In *Ontario (College of Physicians and Surgeons of Ontario) v. Minnes*, 2015 ONCPSD 3, the Committee made a finding of disgraceful, dishonourable, or unprofessional conduct. Dr. Minnes had attempted to sexually assault a 17-year-old female counsellor at a summer camp where he was the camp physician. The Committee found that Dr. Minnes was in a clear position of authority with respect to the complainant, despite the absence of a doctor/patient relationship. The Committee found that no penalty short of revocation would have adequately addressed the principles of penalty.

[26] In *Ontario (College of Physicians and Surgeons of Ontario) v. Marshall*, 2016 ONCPSD 31, the Committee found that Dr. Marshall had engaged in disgraceful, dishonourable or unprofessional conduct, in respect to the sexual assault of a teenage boy (the existence of a doctor-patient relationship was not established):

The public must feel confident that no physician will ever misuse his position of trust and authority in the way that Dr. Marshall has done. Although the Committee found that there was no doctor-patient relationship in this case, the Committee concluded that Dr. Marshall's behaviour reflected a most serious breach of trust. The Committee concluded that the public should not be exposed to the risk, and indeed the public must feel confident that it will not be exposed to the risk, that Dr. Marshall will abuse his position of trust as a physician in the future. The Committee regarded Dr. Marshall's behaviour as misconduct of the most serious degree.

[27] The young age and vulnerability of each of the complainants and the fact that Dr. Taliano breached his position of trust is a significant aggravating factor.

Mitigating Factors

Passage of Time

[28] While we accept that these incidents occurred in 2011 and 2012 and there is no evidence of any other misconduct, we do not accept that the passage of time in this case is a mitigating factor. In *R. v. H.S.*, 2014 ONCA 323, the Court held:

[53] The leading case on the treatment of time lapse in sentencing is *R. v. Spence* (1992), 1992 ABCA 352 (CanLII), 78 C.C.C. (3d) 451 (Alta. C.A.), adopted by Juriensz J.A. for this court in *R. v. W.W.M* (2006), 2006 CanLII 3262 (ON CA), 205 C.C.C. (3d) 410 (Ont. C.A). In *Spence*, at pp. 454-456, the court held that:

When a period of many years has elapsed between the commission of an offence of sexual assault and its discovery by the authorities, that circumstance dictates review of the degree to which the usual principles of sentencing are applicable in such circumstances.

The lapse of time does not in any way render inapplicable the principles of general deterrence and denunciation. The first of these requires a sentence which will intimidate those other than the offender who might be tempted to follow his example. The second requires a sentence by the imposition of which the court will reflect society's view of the wrongness of the conduct, and persuade those who might be confused about what is right and wrong. These two principles may overlap in their effect on the choice of sentence.

The need for the sentence to reflect the community's desire to denounce offences of the kind with which we are concerned is not diminished by the passage of time. Conversely, if the court were to impose a lenient sentence because of the passage of time, some members of the community might regard the sentence as judicial condonation of the conduct in question. That would tend to lessen respect for the administration of justice. In the circumstances we are considering in these appeals, the lapse of considerable time, and (we assume, for the purpose of discussion) the intervening years of unblemished conduct, do not lessen the relevance of these two principles.

[...]

The only sentencing principles which may be affected by the lapse of time are those of individual deterrence and rehabilitation. By individual deterrence we mean that the sentence should deter the accused from committing a similar offence in the future. By rehabilitation we mean that the sentence imposed should reflect

the hope that somehow, while serving his or her sentence, the accused will be rehabilitated and at its end will resume his or her place in society as a useful and law-abiding citizen. These two principles overlap. In the case of a sexual offence against a child, when on occasion the child does not report the offence to the police or any other authority until many years after the event, should the sentence be less than what it would have been if the prosecution had occurred not long after the commission of the offence? If the accused, during the intervening years, has led an exemplary life in all respects, including non-repetition of sexual offences, and upon the matter ultimately being reported to the authorities and during the resulting investigation and prosecution he is remorseful, then the principles of individual deterrence and rehabilitation may arguably, by themselves, not justify a stern sentence of the kind which would have been obligatory many years earlier. It will be noted, however, that if, despite having led an exemplary life, the offender lacks remorse, any potential discount must be less than it otherwise would have been.

[29] Dr. Taliano did not testify at the penalty hearing. We have no direct evidence from him of remorse or insight. The absence of remorse or insight is not an aggravating factor, but it is relevant to consideration of whether the passage of time should be considered a mitigating factor in fashioning an appropriate order. As discussed in Spence, remorse and insight are only relevant to the principles of individual deterrence and rehabilitation. Our decision must address numerous principles, including maintaining the integrity of the profession and public confidence in our ability to regulate in the public interest.

[30] We also note this Committee's comments in Noriega: "The absence of further evidence of sexual misconduct hardly qualifies as a mitigating factor, in the view of the Committee."

[31] In the absence of any evidence of remorse and given the very serious nature of our findings, we do not find the passage of time to be a serious mitigating factor.

Letters of support

[32] Dr. Taliano submitted many letters of support. The letters were all written prior to publication of the Committee's finding that Dr. Taliano sexually abused Patient A and the authors of the letters could not have been aware of our findings when they wrote the letters.

[33] We considered the following quotations from cases on the issue of the weight to be given to letters of support.

a. *Noriega*

The Committee accepts that the letters of support from the families of some of Dr. Noriega's patients, submitted on his behalf, indicate that these individuals consider him to be compassionate, dedicated, trustworthy, and skilled. These letters of support, however, are of only very limited utility in light of the finding of sexual impropriety made in this case. As noted by previous panels of the Discipline Committee in similar cases, it is not unusual for a physician to be very highly regarded by many patients, and to be thought of as a competent and trustworthy physician, but to have behaved with another patient in a most appalling and egregious fashion. Sexual misconduct, by its nature, is usually a secretive activity which occurs in private. While the Committee accepts that Dr. Noriega has shown himself capable of conducting himself in an exemplary fashion with other patients, in the view of the Committee this does not mitigate the severity of the offending behaviour which he has been found to have engaged in.

b. *Ontario (College of Physicians and Surgeons of Ontario) v. Minnes, 2015 ONCPSD 3 (Minnes 2015)*

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

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

Prior Cases

[34] The Committee is not bound by its prior decisions. We accept, however, that the principle of fairness provides that like cases should be determined in a like manner. While no two cases are ever identical, we look to prior decisions of the Committee to establish a reasonable range of penalties. The parties provided us with several decisions, some of which have been referred to already.

[35] Dr. Taliano's counsel directed us to several cases which he submitted were similar in nature, but which did not result in revocation. We discuss some of these cases below.

Ontario (College of Physicians and Surgeons of Ontario) v. Peirovy, 2015 ONCPSD 30

[36] The Committee found that while examining patients with a stethoscope, Dr. Peirovy cupped patients' breasts, touched patients' nipples, placed his stethoscope directly on patients' nipples and in one instance "tweaked" or squeezed a patient's nipple. While Dr. Peirovy's misconduct was very serious and involved several patients, the Committee explained at length why in the particular circumstances of that case it decided not to revoke his certificate. The Committee noted the extent of Dr. Peirovy's engagement in his rehabilitation and the Committee placed substantial weight on the uncontradicted expert evidence that Dr. Peirovy was at low risk of re-offence. The complainants, although vulnerable as they were patients, were not adolescents. We do not find the facts of this case analogous to those of this case.

Ontario (College of Physicians and Surgeons of Ontario) v. Khan, 2020 ONCPSD 24

[37] This case also involved the sexual assault of a teenage boy who was not a patient. Dr. Khan had fondled AB's penis while he believed AB was sleeping. Dr. Khan masturbated while fondling AB. Dr. Khan admitted the allegations and accepted responsibility for his misconduct. The parties made a joint submission on penalty which included a 12-month suspension. In lengthy reasons for decision, the Committee rejected the joint submission and ordered that there should be no suspension. Two Committee members dissented and would have accepted the joint submission. The circumstances of this case were unique, in particular with respect to Dr. Khan's rehabilitation and acceptance of responsibility for his wrongdoing.

The Committee does not find the decision in Khan to be of assistance in determining an appropriate order in this case.

Ontario (College of Physicians and Surgeons of Ontario) v. Sandejas, 2001 ONCPSD 30

[38] Dr. Sandejas pleaded guilty to and was found guilty of a charge of sexual interference with a minor, a girl who was related to him. In the discipline proceeding, Dr. Sandejas admitted that he has been found guilty of an offence that is relevant to his suitability to practise. There was a contested penalty hearing. The family member testified on his behalf. The Committee noted,

She further described how she had established a positive and trusting relationship with Dr. Sandejas despite the highly negative effects that the original behaviour had caused. The witness stated that she totally trusted Dr. Sandejas and believed he would not repeat his behaviour with other vulnerable parties. She described how she felt that revocation of Dr. Sandejas' licence would have untoward or punitive effects not only on Dr. Sandejas, but on her and her family.

[39] The Committee also heard evidence from two psychiatrists who had treated Dr. Sandejas. The evidence was that Dr. Sandejas had made substantial progress in terms of his "suffering and insight." The Committee also heard from a third psychiatrist, who had not treated or assessed Dr. Sandejas, but who opined that "Dr. Sandejas was probably not sexually deviant, but he could not confirm this." He also opined that Dr. Sandejas was at low risk of re-offending. Dr. Sandejas also testified to his own remorse and therapy. The Committee's order included that Dr. Sandejas' certificate of registration be suspended for 18 months, six months of which would be suspended if he continued to receive care from a psychiatrist. There was also a term placed on his certificate restricting his practice to patients over 16 years of age. In reaching this conclusion the Committee noted:

The gravity of this offence justified a clear signal of denunciation to the profession and to the public. At the same time, the Panel was sensitive to the evidence of remorse on the part of Dr. Sandejas, his response to therapy and the effects of the earlier criminal proceedings. The Panel recognized the need for sensitivity in meeting the needs of the victim for privacy and to the victim's statement of support for Dr. Sandejas. The unique facts and context of this case, in which, as noted, there was no physician-patient relationship and family members requested leniency in support of the healing process that has occurred, influenced the

Panel to conclude that a serious penalty short of revocation would serve the public.

[40] This case is almost twenty years old. The reasons for decision are extremely brief given the nature of the allegations and evidence heard by the Committee. The fact that the incident involved a child seems to be the only common ground with the facts in Dr. Taliano's case. We do not find this decision to be helpful in assessing a reasonable range of orders.

[41] The facts in the current case are unique. Dr. Taliano engaged in professional misconduct of a sexual nature with two adolescent boys, one of whom was a patient, the other of whom was not. Both were vulnerable. There is no evidence of insight, remorse or rehabilitation. We do not accept that an appropriate order would be to allow Dr. Taliano to practise with a restriction that he not engage with any patients under the age of 18. Dr. Taliano abused his power. Although these incidents involved young people, there is a risk he would take advantage of other vulnerable patients. There is a significant power imbalance in the doctor-patient relationship and each of these incidents involved an abuse of power by Dr. Taliano. A lengthy suspension is also not appropriate on the facts of this case. This was a significant betrayal of both the public trust and the trust of the individuals with whom these incidents occurred. Even if revocation was not mandatory, we would order that his certificate of registration be revoked.

Funding for counselling

[42] The College seeks an order that Dr. Taliano post security of \$17,320 for reimbursement for counselling for Patient A. This amount represents what OHIP would pay for 200 units of individual out-patient psychotherapy with a psychiatrist, which is the amount of funding for which patients are eligible under the governing regulation, Funding for Therapy or Counselling for Patients Sexually Abused by Members, O. Reg. 59/94.

[43] Section 85.7 of the Code sets out the eligibility of patients who were subject to sexual abuse by a member to seek funding for therapy and counselling. Section 51(2)5.1 of the Code gives the Committee authority to require the member who has engaged in sexual abuse of a patient to reimburse the College for funding for therapy obtained by the patient under s. 85.7 of the Code. If we make an order

under s. 51(2)5.1, we may also order under s. 51(2)5.2 that Dr. Taliano post security acceptable to the College.

[44] Dr. Taliano did not take a position on the College's request that he post security for the costs of therapy.

[45] Patient A explained in his witness impact statement:

For years I had to live with the fear and humiliation of what he did to me. Growing up with inability to form any kind of intimate relationship and the fear of being touched by anyone has created such a crippling feeling of isolation that no one should ever have to endure.

[46] We are satisfied based on the evidence of Patient A at the hearing and his witness impact statement that the sexual abuse has had a profound impact on him. We find there is an evidentiary basis from which we can draw a reasonable inference that Patient A would benefit from and may participate in therapy or counselling: *Ontario (College of Physicians and Surgeons of Ontario) v. Lee*, 2019 ONSC 4294; *Sliwin v College of Physicians and Surgeons*, 2017 ONSC 1947.

Costs

[47] The College sought costs of \$124,440, consisting of 12 days at the tariff rate of \$10,370 per day. This includes four days for motions, seven days of hearing and one day for the penalty hearing.

[48] Dr. Taliano submitted that no costs should be awarded, on the basis that it was entirely appropriate for Dr. Taliano to defend himself against the allegations concerning events that occurred almost a decade ago. The Committee agrees that Dr. Taliano was certainly entitled to defend himself. His right to respond to the allegations, however, has no bearing on the issue of whether the College should be awarded costs, and, if so, in what amount.

[49] In the alternative, Dr. Taliano submitted that the appropriate amount of costs should be no more than \$45,000 on the basis that:

- A costs order in the amount sought by the College would be punitive.

- Costs should be based on 9.5 hearing days, rather than 12, on the basis that the adjournment motion of October 21, 2019, the final day of the evidence (November 22, 2019) and the penalty hearing were half rather than full hearing days, and
- He should bear no costs in relation to the third-party records motion of October 30, 2019 as it was reasonable and appropriate to advance this motion.

[50] His calculation was based on \$5,000 per day.

[51] In subsequent submissions, Dr. Taliano took the position no costs should be awarded for either of the third-party records motions (August 23, 2019 or October 30, 2019) on the ground that third party records motions should be treated as preliminary motions and the Committee has no jurisdiction to award the costs of preliminary motions.

[52] In considering the issue of costs, we begin with s. 53.1 of the Code which states:

In an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct or finds to be incompetent to pay all or part of the following costs and expenses:

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

[53] The Code provides no further guidance on the issue of costs. Of note, s. 53.1 provides for an order of costs only after there has been a finding of professional misconduct or incompetence. Section 53.1 makes no specific reference to costs of motions.

[54] Rule 14.04(3) of the Rules of Procedure of the Discipline Committee sets out the costs of a day of hearing:

14.04(3) Where the request for costs or expenses includes the cost or expense to the College of conducting a day of hearing, no

evidence of the cost or expense of a day of hearing is needed if the request is equal to or less than the amount set out in Tariff A.

[55] Tariff A to the Rules, entitled “Costs and Expenses for the College to Conduct a Day of Hearing,” provides that “costs and expenses of a day of hearing” are set currently at \$10,370. The tariff currently does not provide any description of the costs and expenses covered by the tariff.

[56] *Franklin v. College of Physicians and Surgeons (Ontario)*, 2007 CanLII 45406 at para. 2 (ON SCDC) states that express statutory authority is required for an administrative tribunal to order costs.

[57] We find that while s. 53.1 of the Code makes no specific reference to the costs of motions heard throughout the hearing, such costs are reasonably interpreted as “costs and expenses incurred in conducting the hearing.”

[58] In this case, Dr. Taliano brought all his motions after the commencement of the hearing as demarcated by filing the Notice of Hearing and entering the member’s response (plea) to the allegations. Regardless, even if the motions had been preliminary motions, we would still find that such motions fall within the scope of s. 53.1(3) as “costs and expenses incurred in conducting the hearing.”

[59] Motions about third-party records arise regularly in College proceedings. These motions are heard on the first day of the hearing by the hearing panel. Given the nature of these motions, they are scheduled in advance of other hearing dates. We do not accept the argument that third-party records motions should be considered prehearing motions and therefore not subject to costs. We note this Committee has awarded the costs of third party record motions on several occasions: *Sliwin, S.J. (Re)*, 2013 CanLII 101334 (ON CPSD); *Ontario (College of Physicians and Surgeons of Ontario) v. Wong, R. C. K.*, 2014 ONCPSD 3; *Ontario (College of Physicians and Surgeons of Ontario) v. Schwarz*, 2019 ONCPSD 54; *Ontario (College of Physicians and Surgeons of Ontario) v. Bonin*, 2012 ONCPSD 7; *Ontario (College of Physicians and Surgeons of Ontario) v. Schwarz*, 2019 ONCPSD 54.

[60] Consequently, we reject the submission that we have no jurisdiction to award costs of the two third-party records motions. We accept that the costs of the motions

heard on August 23, 2019, October 21, 2019, October 28, 2019 and October 30, 2019 are all reasonably interpreted as costs in conducting a hearing as stated in Rule 14.04(3) and s. 53.1(3) of the Code.

[61] We have broad discretion in awarding costs; *Reid v. College of Chiropractors*, 2016 ONSC 1041 at para. 219 (Div. Ct.); affirmed on appeal at 2016 ONCA 779:

The jurisdiction to award costs in a health professional misconduct matter is found in s. 53.1 of the Health Professions Procedural Code, Schedule 2 of the Regulated Health Professions Act, S.O. 1991, c. 18 (the “Code”). That section grants to the Panel a broad discretion to order that “in the appropriate case” the College be indemnified for not only its legal costs but for the costs incurred for both the investigation and the hearing.

[62] We find this is an appropriate case in which to award costs. In doing so, we note that the College was entirely successful in its case:

1. Findings of sexual abuse and disgraceful, dishonourable or unprofessional conduct were made as set out in the Notice of Hearing;
2. The College was successful in all aspects of the allegations against Dr. Taliano and he was entirely responsible for these two incidents.

[63] The College’s success in the proceedings is a factor that we are entitled to take into account: *Reid* at para 26.

[64] Dr. Taliano asserted that a full day’s tariff should not apply to motions that did not consume a full day. There were also days in which the hearing took only half a day, and this was not solely attributable to Dr. Taliano. It is not unusual for this situation to arise during the course of a hearing and it would be difficult to assign responsibility for all the time not used. The Committee stated in *College of Physicians and Surgeons of Ontario v. Garcia*, 2018 ONCPSD 35, “The Committee sees no reason to deviate from the principle that the per diem tariff rate is to be applied for each hearing day, notwithstanding that only part of a full day is utilized.”

[65] We agree that there is no reason to deviate from the principle that the daily tariff rate is to be applied for each hearing day, notwithstanding that only part of a full hearing day is utilized.

[66] The daily tariff has increased significantly over the past decade. The current tariff of \$10,370 has been in place since March 2019. We acknowledge that there is a concern that the risk of a large cost order has the potential to deter members from making a full and vigorous defense. We also acknowledge that costs in the amount requested by the College, coupled with our order of revocation, may have a significant financial impact on Dr. Taliano, although he provided no evidence of his financial circumstances.

[67] The costs awarded should be fair and reasonable in the circumstances. The intent is to compensate the College for the legal costs and expenses incurred, as set out in the Code. The objective is certainly not to penalize Dr. Taliano for mounting a vigorous defence. We agree that the hearing proceeded systematically and there was no unnecessary delay, unreasonableness or bad faith by either party. We must balance the concern that the profession ought not to bear the entire cost of a discipline hearing against the concern that members should not be prevented from defending themselves by the threat of a large cost award being made against them. We find that the tariff adequately achieves this balance. We note that the College has not sought all its costs. Although costs are not intended to penalize the member, it is to be expected that a costs order will have a negative impact.

Reprimand

[68] A reprimand is mandatory in this case, given our finding of sexual abuse. The reprimand will serve to denounce the misconduct.

Complying with the College policy “Closing a Medical Practice”

[69] Both parties submitted that this was an appropriate order. This policy provides in part that a physician must take reasonable steps to arrange for ongoing care of patients and access to medical records when they close a practice.

Order

[70] The Committee orders and directs:

1. The Registrar shall revoke Dr. Taliano’s certificate of registration effective immediately;

2. Dr. Taliano shall appear before the panel to be reprimanded within 30 days of the date this order becomes final;
3. Dr. Taliano shall comply with the College's Policy, "Closing a Medical Practice";
4. Dr. Taliano shall reimburse the College for funding provided to patients under the program required under s. 85.7 of the Code, and shall post an irrevocable letter of credit or other security acceptable to the College to guarantee payment of such amounts within 30 days of the date this order becomes final, in the amount of \$17,370; and
5. Dr. Taliano shall pay costs of \$124,440 to the College within 30 days.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

BETWEEN:

College of Physicians and Surgeons of Ontario

- and -

Dr. John Patrick Taliano

The Tribunal delivered the following Reprimand
by videoconference on Monday, April 10, 2023.

*****NOT AN OFFICIAL TRANSCRIPT*****

Dr. Taliano,

The public places great trust in the medical profession and we must be worthy of that trust. Your behavior, as found by this Committee, violates the trust invested in you in the most abhorrent manner. Your actions in regard to two adolescent boys were sexually demeaning and entirely disrespectful. The medical profession is committed to always placing patient needs first; your behavior is the antithesis of what the public and the profession demand and expect of physicians.

The disrespect shown to your adolescent patient and to another adolescent whom you had welcomed into your life should have been clear to you. As a physician and host, you had the power to manipulate these boys and you did so with no thought as to their well-being or the effect your actions may have on their future. The consequences of your actions are far reaching. You have heard the victim impact statements read into the record. They are worth repeating.

From Patient A:

“Dr. John Taliano used his position of authority not only to take advantage of me but my family as well. These events that transpired in that room had rippling effects throughout all of our lives. For years I have lived with the fear and humiliation of what he did to me. Growing up with an inability to form any kind of intimate relationship and the fear of being touched by anyone has created such a crippling feeling of isolation that no one should ever have to endure. My parents have had to live with misplaced guilt that this was their fault. It was not. He used his position to exploit all of us.”

And from Witness B:

“This has possibly been the most difficult experience I’ve had in my life. I’m not just referring to the original trauma but also the investigation and the trial. It was extremely painful, disturbing and disruptive to both my life and my family’s.”

“It has profoundly affected me in many ways.”

“I have trust issues. Since the trial, I have had sleep issues and focus issues. I have suffered with some form of paranoia. I have suffered with depression, and all of this resulting in isolation.”

The consequences of your misconduct are not limited to the victims. It is likely that your own extended family will experience embarrassment, pain and hardship. Further, the indirect impact on the professional reputation of physicians and how the public views the profession as a whole should not be lost.

That you may have served some patients well, as illustrated in the letters submitted by counsel on your behalf, is expected. That removal of a physician's services may cause difficulty in the community goes without saying. However, it does not lessen the degree of your abhorrent conduct.

We condemn your behaviour. Revocation of your certificate of registration is the only appropriate order in this matter and necessary to clearly distance you from the medical profession.