

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Naeem Hafiz Muhammad, this is notice that no person shall publish or broadcast the name or any information that could identify the identity of the complainant under subsection 47 of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

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: Muhammad, N. (Re)

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. NAEEM HAFIZ MUHAMMAD

PANEL MEMBERS:

DR. P. CHART (CHAIR)
S. BERI
DR. D. WALKER
D. GIAMPIETRI
DR. P. TADROS

Hearing Date: November 13, 14, 15, 16, 29 and 30, 2012
Decision Date: February 14, 2013
Release of Written Reasons: February 14, 2013

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons (the “College”) heard this matter at Toronto on November 13, 14, 15, 16, 29 and 30, 2012. At the conclusion of the hearing, the Committee reserved its decision.

ALLEGATIONS

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

1. under clause 51(1)(b.1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18, in that he has engaged in the sexual abuse of a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991, 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. Muhammad denied the allegations.

FACTS AND EVIDENCE

(a) Overview of the Issues

The Notice of Hearing raises the following issues to be determined:

1. whether, while she was his patient, Dr. Muhammad engaged in the sexual abuse of Ms X and disgraceful, dishonourable or unprofessional conduct in his relationship with her, including by hugging her and making inappropriate comments to and about her, including sexual comments.

2. Whether, on or about September 10, 2010, while Ms X was working at Dr. Muhammad's clinic, Dr. Muhammad made inappropriate and sexual comments to her and engaged in sexual abuse of her, including by touching her lips, hugging and kissing her.

While the Notice of Hearing referred to September 10, 2010 in paragraph 2 above, it was common ground that those allegations related to events on September 11, 2010.

Subsection 1(3) of the Code defines sexual abuse of a *patient* by a member as:

- a) sexual intercourse or other forms of sexual relations between the member and the *patient*,
- b) touching of a sexual nature, of the *patient* by the member, or
- c) behaviour or remarks of a sexual nature by the member towards the *patient*.

[Emphasis added]

Subparagraphs 1(3)(b) and (c) are applicable to the allegations in this case. As emphasized, to fall within the meaning of sexual abuse as defined in the legislation, the Discipline Committee must find that the alleged sexual misconduct occurred with a patient. The Discipline Committee cannot make a finding of sexual abuse if a physician engages in sexual misconduct with someone other than a patient, although if the sexual misconduct occurred with a non-patient such as an employee, the Discipline Committee may make a finding on the allegation of disgraceful, dishonourable or unprofessional conduct.

Thus, the Committee found itself tasked with determining on the balance of probabilities whether the alleged misconduct occurred, and whether a doctor-patient relationship existed at the time of the alleged misconduct. An assessment of the credibility of the witnesses was key to the Committee's determinations.

(b) Summary of the Evidence

Dr. Muhammad is a family physician practising in London, Ontario. He was born in Pakistan where he obtained his medical degree before immigrating to Canada in 2003. He completed a Canadian residency program in Family Medicine in June 2009 and began a locum at St. Joseph's Hospital in August, 2009. He also began working part-time at Clinic A, owned by Dr. H, a dentist who had a practice in the same building.

In or around December 31, 2009, Dr. Muhammad and Dr. H established a partnership, becoming co-owners of Clinic A. They also anticipated opening a new clinic. Their new clinic, Clinic B, was opened in April 2010.

Dr. H was responsible for the business aspects of operating the clinics while Dr. Muhammad was responsible for the medical matters and physician staffing.

Dr. H and Dr. Muhammad employed an office manager, Ms Y, who had responsibility for both clinics.

The complainant, Ms X, is a university student. One of seven children, she lives at home with her parents, although at the time of the events in question in September 2010, Ms X lived in an apartment with a friend. She was in her early 20's at the time of the September 2010 events.

Ms X started working at Clinic A in September 2009 as a part-time receptionist. Her employment arose because she was friends with another part-time receptionist at the clinics, Ms V. Ms V's mother, Ms Q, was a long time employee in the dental practice of Dr. Y. Prior to commencing work at Clinic A, Ms X had an interview with Ms Y and Ms X was hired thereafter.

When Drs. X and Muhammad opened the second location, Clinic B, in April 2010, Ms X began working shifts at both locations. The usual staffing arrangement for each clinic was to have one receptionist and one physician on site during operating hours.

Ms X frequently worked the same shift as Dr. Muhammad at both clinics.

Although she had her own family doctor, Ms X did attend Dr. Muhammad as a patient in one or other of the clinics for episodic, minor complaints on five occasions while an employee and at the time she was working a shift (confirmed by the clinic patient log, the staff schedule and acknowledged by Dr. Muhammad). These attendances were on December 28, 2009, and January 24, March 14, July 21, and July 25, 2010. On each of these occasions, Dr. Muhammad acknowledged and his charts indicate that he took a history of Ms X's complaint, conducted a relevant examination, reached a diagnosis, communicated it to Ms X, provided advice, treatment and a follow-up plan, and billed OHIP for each visit.

Dr. Muhammad admitted in his written closing argument that there was an ongoing doctor/patient relationship on September 11, 2010, and that if the allegations relating to September 11, 2010 were proven, then this would constitute sexual abuse of a patient.

The position of the College is that on September 11, 2010, Dr. Muhammad sexually abused Ms X, his employee and patient, by hugging and kissing her and through his comments to her. It is also the College's position that he made sexual comments to her on prior occasions and that these comments also amounted to sexual abuse. It was also the College's position that Dr. Muhammad's conduct on September 11, 2010 and on prior occasions was disgraceful, dishonourable and unprofessional.

The position of the defence is that on September 11, 2010, Ms X anticipated being fired from her part-time job due to poor job performance and thus fabricated an incident of sexual abuse so that she could not be fired. It is also the defence's position that there were no sexual comments made to Ms X on September 11, 2010 or at any other time.

The College called as witnesses Ms X, Ms V, MS Q and Dr. H. Dr. Muhammad testified on his own behalf and the defence called Ms Y and an investigator, Mr. K.

Testimony of Ms X, the Complainant

Ms X testified she heard about a potential job at Clinic A through her best friend, Ms V, who worked there and whose mother, Ms Q, was the book-keeper for Dr. H's dental practice and for the walk-in clinics.

Ms V arranged for Ms X to be interviewed by Ms Y, the clinic manager. Ms X remembers the interview as lasting about fifteen minutes. When asked whether the fact that she also worked part-time as a promotional rep for Workplace 1 was discussed, she stated she thought it would have been as Ms Q was asking about hours she might work at the clinic. When asked whether it would have been on her submitted resume, she stated that she assumed it was, but could not be certain. She stated she was never told she could not hold another part-time job. She got the job and began work the next week.

Ms X's testimony was that other part-time employees of the clinic had other jobs, her friend Ms V having two. Ms X stated that her job at Workplace 1 involved mostly evening shifts from 9:00 pm to 1:00 am, occasionally day-time shifts, predominantly in the summer months (May to August). She stated that during the school year, her clinic job and the reduced frequency of the Workplace 1 job never conflicted as the Workplace 1 job began after her clinic shifts ended; during the summer, with an advance schedule at the walk-in and her room-mate arranging the Workplace 1 schedule, she could switch shifts to accommodate both jobs.

Ms X testified that she saw Dr. Muhammad as a patient five times between December 2009 and July 2010 at the walk-in clinic. Although she had a family doctor, it was more convenient for her to see Dr. Muhammad at the clinic when they were both working as she didn't have a car and Dr. Muhammad accommodated staff in this fashion.

Ms X testified that most of her shifts at work were with Dr. Muhammad. She felt their relationship was good. When asked if he always acted in a professional manner, she replied "not always." Ms X described Dr. Muhammad asking her what she wore at her Workplace 1 job; if it were at a beach, whether she wore a bikini; whether there were on-line pictures of her in beach wear. Ms X also stated that Dr. Muhammad (who had treated Ms X's sister) once said, "You know, she looks like she would put up a fight if you were to throw her in the back of a vehicle."

Ms X said she ignored these comments, said nothing to Dr. Muhammad, Dr. H or Ms Y the office manager, but did talk about it with Ms V and the other employees.

On Saturday September 11, 2010, Ms X stated that she was working the day shift at Clinic B, where she was expected to arrive at 9:00 am. She said she had been working at her Workplace 1 job until 12:30 am the night before.

Ms X stated that she recalled opening Clinic As usual, including registering patients and seeing Dr. Muhammad arrive and begin working. Ms Y stopped into the clinic, did some copying, spent a brief time with Dr. Muhammad in his office and then left.

Ms X stated that at a point later in the morning, around 10:00 am, she went with Dr. Muhammad to his office at the back of the clinic to pick up some charts. They were chatting about his sick mother whom he had just visited in Pakistan. She stated that he noticed that she had a small cut on her lip, asked if she had put anything on it and, to her negative response, offered to get a sample from their sample cupboard. He did so, and subsequently applied the cream to her lip, without using gloves. Ms X states that while still speaking about his mother, he started putting the cream all over her lip, not just on the cut area, then hugged her, and she hugged him back. Ms X stated that she was being sympathetic and did not think too much of it, but then he kissed her on the side of her cheek whereupon she pulled back, just as he tried once more to kiss her. She pushed him off and returned to the reception area.

Ms X testified that shortly thereafter, she texted her friend, Ms V, about the incident. She felt “kind of in shock” and didn’t know what she was supposed to do, or whom to contact, so she was waiting for Ms V to respond.

Ms X testified that she subsequently returned to Dr. Muhammad’s office and he asked her to sit down, whereupon he started talking about her eyes, how they were really pretty and that he was not usually attracted to younger girls, but that there was something about her that drove him crazy; and that as he was saying this, he rolled his chair closer and tried once more to kiss her, on the lips, unsuccessfully.

Following this incident and while still at work that day, Ms X testified that she spoke to her friend, Ms V, who in turn had already spoken to her mother who had advised that Ms X speak to Dr. H about what had happened.

Ms X stated that she finished work shortly after 4:00 pm, was picked up by her brother, went home and called Dr. H around 5:00 pm and told him what had happened. He asked her to type out a report about it, to email it to him and then they would meet to discuss it. Ms X emailed her report to Dr. H on the following Monday, September 13, 2010.

The Committee was provided with a copy of Ms X’s report for identification purposes. Its content was consistent with the testimony described above, with the exception of the fact that the incident report describes one continuous incident rather than two separate incidents in Dr. Muhammad’s office.

Ms X testified that subsequently she met with Dr. H, discussed what had happened, and that he said he would speak with Dr. Muhammad and contact her again. She further testified that a second meeting was arranged for September 15, which she attended with a family friend, Mr. R. At this second meeting, Dr. H gave her a document that said he could no longer investigate the matter. The Committee was provided with a copy of this document (Exhibit 5).

Following the meeting, Ms X testified that Mr. R filed a complaint with the College on her behalf. She stated that since Dr. H was not going to investigate further, the matter would otherwise just go away, and Dr. Muhammad wouldn't understand that his behaviour was unacceptable. Ms X also filed a complaint with the Human Rights Tribunal with the goal of seeking compensation for lost wages if she lost her job.

Ms X stated that Dr. H subsequently asked her to another meeting as he thought he might have a solution. Upon arriving at the meeting with Mr. R, she was told Dr. Muhammad would be there, which she didn't like. After some conversation, Dr. H said he would write up an agreement, which he presented at a subsequent meeting with just Ms X and Mr. R. The Committee was provided with a copy of this document (Exhibit 6 – “Agreement between [Ms X] and Naeem Muhammad”), which states Dr. H would be given authority to do a variety of things in the clinic, including: installing additional cameras; ensuring fair work hours; having written, fair, impartial staff reviews; Dr. H playing a role if work related warnings were felt unwarranted; providing Ms X with a one month leave of absence; and, ensuring Ms X and Dr. Muhammad not work the same shifts without their agreement.

Ms X stated that she discussed the proposed “agreement” with her parents, Mr. R and an advisor at the sexual assault centre and decided not to accept it as it didn't address the issue of Dr. Muhammad kissing her. She stated she wanted an apology and for him to take sexual harassment training.

Subsequently, Ms X stated that she no longer worked at Clinic But did continue to be paid, until April 2011. She never received a termination letter.

Ms X testified about her job performance. She agreed she had received from Ms Y a letter dated August 12, 2010, which was left for her at work and addressed two issues: one, the turning away of a patient from the clinic toward the end of a shift; the other concerning attending to incoming phone calls.

Ms X stated she was a bit shocked at receiving the letter as it was common practice to stop taking patients before the actual closing time, as that's the time the doctor wishes to leave and so registering patients right up to closing time would delay finishing work. She did not discuss the letter with Ms Y, nor did Ms Y discuss it with her. She stated she thought that if it was that important Ms Y would have brought it up with her. Furthermore, she knew that other employees had received letters which she understood to be similar in nature.

Ms X testified that a communications book was used to leave notes between staff and from the office manager. Notes to her in the book concerning job performance were, to her recollection, mostly during her training period - September, October and November, 2009. Furthermore, she testified she received positive feedback, mostly from Dr. Muhammad. This included the occasional small gift of cash from Dr. Muhammad when he told her that she did "a really good job today. You worked really hard." He also provided a gift card for a car wash she could use.

Beyond the August 12, 2010, letter and the notes in the communications book, Ms X testified she was unaware of any other feedback about her job performance.

Ms X testified that her Workplace 1 job ended in October 2010 and she got another job, this time at Workplace 2. She did not tell Clinic As she always had had another part-time job when working at the clinic. She testified that in April 2011, she received a letter from Dr. H dated April 4th stating, "we understand you're working in the retail setting now." She stated she believed that Dr. H was made aware of this by Ms Y who had visited the store, made inquiries of the other staff about Ms X, and became aggressive with a Workplace 2 employee resulting in a complaint to the police.

Dr. H's letter was entered as Exhibit 8. It continues by saying, "Accordingly, the wage continuance ceases. If you wish to work in the Clinic when you would not be alone with Dr. Muhammad, as already offered, please contact me before April 17, 2011."

In cross examination, Ms X agreed that she needed her two jobs to make the money required for her to live away from her parents' home. However, she said that if she needed additional help, her parents would have provided it.

In the matter of the extended paid leave of absence, Ms X said she did not feel comfortable returning to work at the clinic, even with other doctors, as Dr. Muhammad, as an owner, could come by at any time.

Ms X denied that she knew her job performance was inadequate, that she knew she was about to be fired, or that on September 11, 2010, she overheard Dr. Muhammad telling Ms Y that she must fire Ms X.

Ms X was cross-examined on her Workplace 1 schedule and its potential for impinging on her work schedule at the clinic. The evidence presented showed that some of the venues were out of town and that with start times between 7:30 pm and 9:00 pm at Workplace 1 and the clinic closing by 8:00 pm, there was the potential for conflict. However, there was no evidence introduced that on any specific date such a conflict indeed occurred.

Ms X was asked about closing the clinic early or turning patients away. She replied that some of the doctors asked that staff cease registering patients before closing time so that they could leave on time.

In cross examination, Ms X was questioned about the fact that in her testimony, she described the September 11, 2010, meeting with Dr. Muhammad as two separate incidents, while in her verbal conversation with Dr. H, her written incident report, the interview with the College investigator and in communication with the Human Rights Commission, she had always described them as one continuous episode. Ms X's only explanation was that "I guess I wasn't clear in explaining it" [in her earlier statements] and "it didn't really seem like an important detail." She maintained that the two incidents were separated in time and did not occur as one incident. Defence counsel suggested that

the existence of video footage to be introduced as evidence prompted her to change her story but she denied this.

Ms X was questioned about her behaviour and demeanour, and her frequent interactions with Dr. Muhammad, captured on video footage of the clinic that day. Ms X stated that she just carried on working, was in shock about what happened and felt intimidated by Dr. Muhammad. She denied telling him repeatedly that her job at Workplace 1 was over. She denied overhearing a conversation between Ms Y and Dr. Muhammad about her being fired.

Ms X was questioned about Clinic B opening time and maintained that she was not told that as Clinic B became busier, she was required to arrive earlier than the posted opening time of 9:00 am.

Ms X denied that Dr. Muhammad seemed annoyed with her on the morning of September 11. She denied being aware that she made more billing errors than others, or that Dr. Muhammad was annoyed that she did not always answer the phone. She denied being reprimanded verbally for texting at work.

It was suggested to Ms X that she could not afford to lose the job. She responded that her parents would have helped her but conceded that if she had heard she was to be fired, it would have been upsetting.

Ms X was asked whether, in her call to Dr. H on September 11, 2010, she had asked about video cameras before recounting what had happened that day. She was unsure of the order of discussion, but agreed she asked the question because the video footage would show what happened.

Ms X confirmed that she told Dr. H that the episode with Dr. Muhammad of September 11, 2010, was “no big deal” but that subsequently it became bigger and bigger in its impact on her life. She further testified that her parents and family friends, Mr. R and

family, constantly supported her and felt strongly about the case and that it should not be dismissed lightly.

Testimony of Ms Q, Dr. H's Office Manager

Ms Q, Dr. H's office manager, testified for the College. She stated she found her role in this matter to be highly conflicted between being the mother of Ms X's best friend and knowing Ms X very well, and being a long time employee of Dr. H. Other than advising Ms X to contact Dr. H and being asked by Dr. H to attend a meeting as a witness only, she tried hard to remain uninvolved.

Her testimony revealed that she was of the opinion that Dr. Muhammad and the office manager, Ms Y, might have been having an affair, based on her finding them in what she thought was an intimate position in the office (with Ms Y's hand on his thigh looking at the computer), and on her daughter Ms V's perception of their closeness. She agreed she had a view that Dr. Muhammad's relationship with Ms Y was unprofessional. She further testified that Ms Y's work performance did not meet Dr. H's high expectations, yet she "gets away with it."

She confirmed that no warning letter to Ms X was ever placed in her employment file. She did recall hearing from Dr. H that Ms X had been reprimanded for texting at work. She was aware of other employees receiving warning letters as well.

Ms Q did confirm that in the late morning of September 11, 2010, her daughter Ms V told her she had received a text from Ms X saying Dr. Muhammad had tried to kiss her and she told Ms V that Ms X would need to contact Dr. H (consistent with a recent office protocol on workplace harassment that Ms Q had played a role in developing). She also confirmed that she learned that two incidents had occurred but was unsure when she learned that.

Ms Q testified she knew nothing negative about Ms X's job performance. She also said that she believed that if Ms X had not reported the incidents, she might well have been fired on the basis that Dr. Muhammad's advances had been rejected.

The Committee found Ms Q gave her testimony in a straightforward and objective fashion.

Testimony of Ms V

Ms V testified for the College. She had worked at both the dental office of Dr. H and the walk-in clinics as a receptionist/ medical office assistant, the same job as Ms X. She worked at Clinic B after it opened in April 2010. She is in her early 20's.

Ms V stated the clinic opened at 9:00 am and that she would close the clinic early on the instruction of the physician or if there were no patients, which was common in the early days of the clinic's existence. At Clinic A, which was busy, she stated she would stop taking patients and bring in the sign ahead of closing time so that by the time registered patients were seen, it was not far past the planned closing time. She said she would close early on occasion without the physician's instruction.

Ms V testified she worked frequently with Dr. Muhammad and that their relationship was very friendly. She said Dr. Muhammad would talk about Ms X, making it clear he liked her. He would ask with whom he would be working the next day, and if told it would be Ms X, he would say, "Ooh [Ms X's first name]!" Ms V stated that the comment was meant to be taken as almost a sexual comment. She testified that Dr. Muhammad told her that he liked working with Ms V and another employee (Ms J) because they were efficient but that he liked looking at Ms X and another employee (Ms S).

Ms V stated she was best friends with Ms X and had been since high school. She stated that she introduced Ms X to Ms Y when she needed a job and helped with her training when she started work at the clinic. She was aware Ms X had received a warning letter

but did not think anything was said to Ms X after she received it. She recalled that others received warning letters, and that they “were thrown around quite a bit.”

She said other matters were addressed in the communications book. She said neither Ms Y nor Dr. Muhammad talked to her about Ms X’s job performance.

Ms V stated that Ms Y frequently came to the clinic where Dr. Muhammad worked, even on the weekends. They spent a lot of time together in the office, going together to get coffee (coming back an hour later with unopened coffee), going to the bank together (but upon returning Dr. Muhammad saying “Oh, I just left my briefcase at home”). She described this as not a typical office manager/doctor relationship.

Regarding the incidents of September 11, 2010, Ms V confirmed that Ms X had texted her that morning and that they subsequently spoke on the phone when Ms X whispered to her. She said Ms X was scared, confused and didn’t know what to do. She testified Ms X was afraid she would lose her job if she said something about the incidents and she couldn’t afford that. Ms V said she should tell Dr. H but would ask her mother for advice. That morning, she did speak to her mother, who said that Ms X should tell Dr. H and that if she didn’t, her mother would.

She testified that a few days later when working with Dr. Muhammad, he said “Why did you do this to me, you made her tell, why did you do this to me?”

Under cross examination, Ms V stated that when later on September 11 in the evening Ms X told her the details of what happened in the clinic, she clearly described two attempts by Dr. Muhammad to kiss Ms X in two incidents.

Ms V acknowledged that there was a fairly high turnover of staff at the clinics.

Ms V testified she would close the clinic early on occasion without asking the doctor and that if it was very busy she would stop registering patients before closing time if there

were a number of registered patients yet to be seen. She did agree she would not turn away a sick patient if she were working with Dr. Muhammad.

Ms V also testified she was unaware staff working at Clinic B had been told in August that they were to start getting there earlier than the 9:00 am opening time.

She agreed that she thought Ms Y and Dr. Muhammad were having an affair and that “they acted like a couple, minus the kissing”.

The Committee found Ms V to have testified in a straightforward and objective fashion.

Testimony of Dr. H

Dr. H testified that Dr. Muhammad began working in Clinic A and that Ms Y mentioned that Dr. Muhammad might be interested in buying in.

In regards to staff firing, Dr. H stated that Ms Y would normally tell him of her intention and he would confirm it. He said that he had seen written warnings created by Ms Y that were inappropriately phrased.

He confirmed Ms X’s call to him on Saturday, September the 11, received when in his car, notes of which he made later. Handwritten notes of other conversations on this matter were contemporaneous, and all were typed later that week. Dr. H’s written and typed notes were introduced and marked as exhibits for identification.

Dr. H testified that his notes reveal that Ms X first told him she was calling to tell him about an incident at work; that she was not initially planning to do so, but was encouraged to by Ms V and Ms Q; that she asked about the cameras in the office; that she didn’t want to make a big deal of it or lose her job; that Dr. Muhammad tried to kiss her; that he had noticed a crack on her lip, went to the cabinet to get cream, and applied it; that Dr. Muhammad hugged her, she hugged back and then he kissed her on the cheek. He testified that his notes continue to describe her sitting in a chair, being told about her eye

colour and another attempt at a kiss. The notes state Ms X said again she didn't want to make a "big deal" and "it's not urgent." He asked her to write it down and meet him the next week.

He stated he received Ms X's report by e-mail on Monday, September 13, 2010. In the interim, between Ms X's call and receiving the e-mail, he told no one.

Dr. H then arranged, by texting around 10:00 am, to meet Ms Y, which occurred at 2:30 pm on September 13th. He informed Ms Y about Ms X's allegations. Ms Y had not heard of this. He asked her if there had been any other complaints about Dr. Muhammad's behaviour, which she denied. She did say that she had warned Dr. Muhammad to be careful of staff that may act too friendly (such as Ms V and Ms X). He asked her about her relationship with Dr. Muhammad.

Dr. H's testimony about this conversation and accompanying notes do not include any mention of Ms Y wanting to fire Ms X, nor of a conversation on the previous Saturday with Dr. Muhammad to that effect. However, Dr. H testified that later in the discussion, Ms Y did raise the matter of Ms X's performance. Dr. H responded that this was not the appropriate time to address such matters, but did ask for information on billing errors.

Dr. H met Dr. Muhammad later that day (September 13, 2010). On the stand, he reviewed his notes from that meeting, which stated, "Very upset. Read report." Further, his notes describe Dr. Muhammad saying, "went to cabinet and got Topicort, then back to office and apply." "Did not kiss [Ms X]." The notes describe Dr. Muhammad saying he gave Ms X a "pat on the back because feel bad, she so tired, because worked until 4 am"..... "unfair to office, not alert, mistakes, not answer phone." Dr. H's notes reveal further on that Dr. Muhammad said that Ms Y had warned him not to be too friendly.

Dr. H testified that he believed that Dr. Muhammad had told him he applied the cream to Ms X's lip, although in cross-examination he acknowledged that it was possible that Dr. Muhammad did not say that. In denying kissing Ms X, Dr. Muhammad said it would be

stupid to do so if someone has a cold sore, and that if he had wanted to kiss a staff member, he simply would have asked them out.

Dr. H was asked about Ms X's job performance. He was aware of the warning letter and said he thought Ms Y may have mentioned Ms X's job performance about four times prior to August 2010. He said Dr. Muhammad had never expressed concern about Ms X's performance to him, although in cross examination, Dr. H stated Dr. Muhammad may have mentioned something once or twice. He agreed that texting was a rampant issue related to all staff. He had reviewed video footage and produced an office protocol with respect to the texting issue.

Dr. H denied that Ms Y or Dr. Muhammad ever told him Ms X's job performance was so bad she should be fired. It was the next day, September 14, when Ms Y wrote him a letter about Ms X's billing errors.

He agreed that in his letter to Ms X of April 4, 2011, announcing an end to her wages, he went on to say that if she wished to work in the clinic when she would not be alone with Dr. Muhammad, she could contact him. He agreed he was willing to let Ms X continue to work at the clinic.

In cross-examination, Dr. H confirmed that neither Ms X's initial description of the events, nor her written report, describe two separate incidents on September 11.

A copy of a document displaying billing errors was introduced (Exhibit 13); he agreed that Ms X made more errors than other staff.

He also agreed that in response to Ms Y's concerns about the phone not being picked up in the clinic, he called in randomly from a blocked number; some calls were not answered by whoever was working. He agreed staff could have been on the other line, busy with a patient or otherwise engaged.

Dr. H also stated that in his September 13th meeting with Ms X, he asked her if she was comfortable working with Dr. Muhammad and that she said she was, but was afraid of Ms Y and that she would give her a hard time.

The Committee was struck with Dr. H's attempts to do the right thing when faced with a challenging situation. He had a long-standing professional association with Mrs. Ms Q whom he trusted, and her daughter's friend was making serious allegations about his business partner. The Committee found him to be clear, fair and open in his testimony.

Testimony of Dr. Muhammad

In his examination in chief, Dr. Muhammad testified that after starting to work some shifts at Clinic A, he expressed to Ms Y his interest in opening his own practice. She suggested he speak with Dr. H. This led to their eventual business partnership and the opening of the new Clinic B.

He described first meeting Ms X when she was hired in September 2009.

He described the circumstances surrounding closing the clinic on evening shifts and how some of the doctors would do so, but denied that staff could do so without permission from the doctor.

Dr. Muhammad described working many hours at Clinic B in its start-up period, "seven days a week, morning until night – 80-90 hours a week" because he was co-owner and in debt. He said he would never turn away a patient, nor want others to do so.

He explained he worked with Ms X four to six times per month. He was not used to working with non-professional staff so he tried to teach them. He said Ms X's job performance was satisfactory in the three month probation period after she began work, but problems began the following summer as Clinic Became busier.

Dr. Muhammad described Ms X coming to clinic exhausted, tired, unmotivated, making registration mistakes, not picking up the phone and closing the clinic early. On one occasion, he asked Ms Y to drive by Clinic A on a Saturday when he was working with Ms X near the end of the shift to see if the door was locked. It was. He said that Ms Y spoke to Ms X about this and Ms X said she would not do this again. He also described an incident when a patient was turned away by Ms X, and the patient's mother complained. He said he was very unhappy with Ms X.

Dr. Muhammad stated he frequently expressed his concern to Ms Y that he wanted someone efficient to work with him. He said he spoke to Dr. H and said, "we need to have properly trained medical staff, not these part time students."

He said he became aware Ms X was working late nights at Workplace 1 in the summer of 2010 and he noticed a distinct change in Ms X. He said he counseled her that working late nights was not good for her. He said it was "just a mention, just small hints that I was giving her."

He described the events of September 11, 2010. He arrived shortly after 9:00 am and first noticed that the open sign was not out as it should have been. As he walked toward the clinic, he saw Ms X at the front desk. He stated that, "she looked very tired and her head was on her hand... holding her head..." He described being upset that the sign was not out, that Ms X was tired and that he was going to have to work with her all day. He stated he asked Ms X if she was okay and she said she hadn't slept the night before, having worked until 4:00 am.

He described Ms Y coming to the clinic that Saturday morning and he told her he wanted to see her before she left. She came back to his office where, with the door open, Dr. Muhammad asked her "please get rid of her." He said he was upset. He said it was a very emotional time for him with his mother sick in Pakistan and the burden of the clinics on his shoulders. Ms Y replied she would get rid of her and left.

He stated that soon afterwards, Ms X asked him if she could see him in an examination room; he said no as it wouldn't look good to a patient arriving to see staff and a doctor coming out of a "closed door."

He described Ms X coming to the office and asking about his mother, agreeing to pray for her and placing a hand on his shoulder, being comforting. She then asked if the clinic had cortisone cream for her lip. Dr. Muhammad inquired whether it was a cold sore. They went to the cupboard in the hall. He found some Topicort, which he gave her. He denied being the one that first brought up the sore lip. He stated that Ms X mentioned she would not be working at Workplace 1 anymore and how much she liked working at the clinic. She left when patients arrived.

Dr. Muhammad described the rest of the morning as normal. He went to buy coffee and bought her one. Later, he shared his lunch with her.

Dr. Muhammad denied hugging or kissing Ms X. He denied making the comments he is alleged to have made.

He stated it was not until Monday while working at Clinic A that he learned from Ms Y of Ms X's allegations in a phone call. He stated he was stunned by this news, and had to stop work, left Clinic And began trying to call Dr. H, eventually reaching him around 7:00 pm. They met shortly thereafter in Dr. H's office where he was shown Ms X's report. He says he kept saying, "it is false."

When asked whether he brought up Ms X's job performance, he said he did but was told this was not the time to discuss it.

Dr. Muhammad also testified that he believed Ms V was behind this. He denied being attracted to Ms X. He explained that when working well, he occasionally gave staff cash gifts, Tim Horton's cards and Christmas money (\$50).

When asked whether he made comments about how the staff looked, he stated that all the staff were good looking. He said that “if there were a few people standing and say, who is the most beautiful girl here, isn’t she? You would say, yes, she is beautiful.”

He testified that he learned that Ms X had once worked at Workplace 3 where “they are famous for their dress” and where the women working there are known as “[Workplace 3] girls.” He stated he asked her once, “So [Ms X’s first name], what do you wear for Workplace 1?” but she did not answer. He agreed that when Ms X would say, “Dr. Muhammad, did you miss me?” he would reply “[Ms X’s first name], we all miss you.”

Dr. Muhammad denied anything but a close professional relationship with Ms Y. He explained that once when upset over news about his mother, Ms Y was comforting him, holding his hand when Ms Q entered the room and saw them. He agreed that he and Ms Y did spend considerable time together, recruiting doctors, going for coffee or attending to banking.

He stated he was happily married. When asked if Ms Y was married, he said, “Yes, to my knowledge she’s still married.” When asked if she was separated, he said he didn’t know much about that.

In cross-examination, Dr. Muhammad agreed that when meeting with Ms Y in the clinic on September 11, 2010, he was upset. He was unsure how loudly he spoke but agreed he didn’t want Ms X to know he was the one triggering the firing and did not know that she was nearby. He agreed he would have spoken in a lower tone if he knew she could hear. In reviewing the video footage, Dr. Muhammad agreed that during his conversation with Ms Y, Ms X was at the front desk the entire time, some of which time she was speaking with patients at the counter or speaking on the phone. When asked whether the video showed Ms X listening, Dr. Muhammad agreed he didn’t know for sure she was listening, and that perhaps she got the impression she was to be fired simply because Dr. Muhammad had asked Ms Y back to his office.

In regards to Dr. Muhammad's testimony that in coming in to the clinic that morning he saw Ms X resting her head on her hand, tired, the video footage was reviewed. Dr. Muhammad agreed that in the minutes prior to his arrival, Ms X was busy and did not appear tired. It became apparent that what Dr. Muhammad saw was Ms X cradling the phone on her shoulder while speaking. He agreed his previous impression was wrong.

In further testimony, Dr. Muhammad stated he did not dislike Ms X but did not want to spend time with her. He was asked about the frequency and length of time Ms X was in his office. He said it was a friendly environment at the office and said "[i]f I wanted to spend time with her it was very easy for me to ask her to go out with me or to – when she was telling me she is working at the bar, I could have gone there, I could have suggested."

Dr. Muhammad agreed he could have asked Ms X to leave his office, but generally didn't. He then agreed that he liked spending time with her, "as a friend, as a person." He agreed, as shown on the video, that he shared his lunch with her on that day; that he joined her at the desk, sitting next to her, conversing for some time. He agreed he did not look upset, annoyed or sad during this time.

In cross-examination, in regards to his relationship with Ms Y, Dr. Muhammad disputed that he had said he saw a lot of Ms Y. After clarification from counsel's notes, he agreed he saw a lot of her. He stated he sees her as a good friend. When asked if he knew she was separated, he answered he did not know, but did know she was going through some court proceedings. He gave medical care to Ms Y's daughter and mother. He agreed he provided her with a lot of support, and that she was dealing with family and custody issues.

When asked again as to whether he knew Ms Y was separated from her husband, Dr. Muhammad replied that he had never asked her. He agreed that it was common knowledge that Ms Y had legal issues with her husband and custody issues with her daughter. At various times in his testimony, he agreed that she had to go to court. At

other times, he stated he did not know about going to court or whether she was happily married, saying, “why would I be thinking about my colleague’s marital life?” He agreed that they did talk about the effect family issues were having on her daughter, but also stated they didn’t talk a lot about this. He repeated that he did not know if Ms Y was together with her husband.

In regards to the incidents on September 11, 2010, Dr. Muhammad recalled that Ms X came to his office, asked to see him in an exam room (which he declined), then said she had a sore on her lip, and he asked whether it was a cold sore. She said no, it was from the dentist. He said he wanted to make sure it was not a cold sore, and then went on to say that “I wasn’t concerned it is, what it is not, because I did not see her as a patient.”

Dr. Muhammad then gave her some Topicort (a steroid cream, not appropriate for a cold sore), and testified that it was “strong, not good to apply to the face but I gave it to her because I wasn’t prescribing it to her.” He maintained he was not giving her medical advice but agreed that Ms X’s lip problem could have been perceived by her as a medical problem.

Testimony of Ms Y, Office Manager

Ms Y testified about the operation of the walk-in clinics. She stated that the normal opening time was 9:00 am and that staff were expected to arrive at 8:30 to open the clinics. However, when Clinic B opened in April 2010, few patients attended, so she informed staff via the communications book that “we are going to start at 9:00 until it gets busy.” She described the use of the communications book (provided to the Committee in the Joint Book of Documents, Exhibit 2, p.122).

Ms Y agreed she told staff they could come in at 9:00. She said this changed in September when she told staff to arrive at 8:30, and said she told them verbally in mid-August but did not write this in the communications book. She testified that staff arriving after 8:30 would be considered late, although 8:45 “would still be acceptable.”

In regards to closing the clinic to patients, she testified that it would always be the doctor's decision, and that if a physician asked the staff to cut off registration, staff would notify Ms Y of the fact in the communications book. She stated that two physicians did this regularly, but not Dr. Muhammad.

In regards to hiring Ms X, Ms Y testified she was aware of her other job at a retail store and that Ms X told her she intended to leave it, and that she wished to work at Clinic A as it complemented the medical course she was taking at her university. Ms Y denied Ms X mentioned working at Workplace 1 and that if she had she wouldn't have hired her.

Ms Y agreed other part-time employees had other jobs and that there was flexibility in scheduling shifts.

Ms Y testified that Ms X's performance during her three month probation period was "not the best." She testified she discussed this with her and wrote notes in the communications book, but that Ms X did not improve. She stated that she informed Dr. H at the end of the probation period that she wanted to let Ms X go, but that he said to give her more time, something he had not done for a couple of years. She attributed this to the "strong relationship between [Ms V], [Ms X] and [Ms Q]." She described Ms Q as very controlling, manipulative and influential, and that she would over-rule Dr. H. She stated that she had to be very careful talking to Ms X or Ms V. She did not wish to upset them as it would "go straight to [Ms Q] and then I would be in trouble."

Ms Y stated that she became aware of Ms X's Workplace 1 job in the spring of 2010 and was unhappy about it. Dr. Muhammad had been complaining to her about Ms X being tired and closing the clinic early when he was working, actually finding Clinic A building locked before clinic closing time one day. She said that Dr. Muhammad requested she drive by one weekend just before closing time when Ms X was working. She did so and found the door locked. On this point, she said she spoke to Ms X, who admitted doing this because she had to run to her other job. Ms X said she would not do this again.

Ms Y described the written warning letter (Exhibit 7) that addressed turning a patient away and properly handling business phone calls. She left the letter at the clinic for Ms X and says she spoke to Ms X about it the following week. She said Ms X said she turned the patient away as she had to leave. Ms Y said she rarely issued such warning letters to staff. She agreed in cross-examination that she toned down the letter because it would be in Ms Q's hands in Dr. H's office.

In regards to the events of September 11, she stated she went to the clinic to "check on staff... I know how it works, when the cat is not home the mice are all over." She said she was in a rush as she didn't want to miss her mom's plane.

Ms Y testified that Ms X told her how happy she was that the previous night was her last working for Workplace 1.

She testified that Dr. Muhammad asked to speak to her; she went to his office where he told her how tired Ms X was and that she had opened the clinic late. She testified that Dr. Muhammad asked her, "you have given her a written warning why don't you fire her?" She explained it was not her final decision. She said she told him she was sick and tired of hearing about Ms X all summer and felt criticized for something she didn't do and that was beyond her control. She said she would talk to Dr. H on Monday and tell him Ms X needed to be fired. She said Dr. Muhammad was upset but even then, he "still has a soft voice." She says the door was open. She agreed her voice was not hushed. She said she lost her temper. She later testified she was yelling.

An e-mail from Ms Y to Dr. H dated September 13, 2010, was introduced into evidence (Exhibit 14). She said this was written before she became aware of Ms X's allegations. The e-mail first described arrangements about another staff member, then that she was thinking of hiring more part-time staff since "[Ms X], [Ms S] and exam time will be tired and stressed out. [Ms X] has two jobs already and school and Naeem and I don't see her work performance sufficient. Maybe cutting down on her hours?" She also mentioned a warning letter she had written for another employee.

Ms Y agreed she did not indicate her intention to fire, or to ask Dr. H to fire, Ms X. She said she would not put something like that in writing, as she was concerned Ms Q might see it, influence Dr. H and make her lose her job over Ms X. She said she had to be very careful and the wording of the e-mail was intended to be a “hint.” She said she was worried she would lose her job as Ms Q didn’t like her; “in general she doesn’t like anyone. She just hates people, she hates everyone, and God forbid you are upsetting [Ms Q], you are out, you are out of the job.”

Ms Y testified that Dr. H texted her around 2:00 pm on Monday, September 13th and asked her to meet him. She testified she met him and told him she was glad they were meeting as something happened on Saturday, she was fed up with this, she had been criticized and blamed for having incompetent staff and she wanted to fire Ms X. Dr. H said “Hold on... this is not about firing [Ms X], it is because there are some allegations that are against Dr. Muhammad.” She responded, “Well you see that’s a problem because now she’s ahead of me.” “She knew that I wanted to fire her,” recalling Saturday when she was “yelling and screaming in the doctor’s office that she wanted to fire her.”

Ms Y stated that she had called the clinic “for other reasons”, asked to speak to Dr. Muhammad and told him of the allegations not knowing that Dr. H had not informed him. She said she told Dr. Muhammad that it “seems like there is a problem. I can’t fire [Ms X] right now because it seems like there are allegations against you, as you know.” Dr. Muhammad became upset and she told him to speak to Dr. H.

Upon further questioning, she denied being in a sexual relationship with Dr. Muhammad or any relationship beyond the professional, although admitted she was very close to him, liking him as a physician, and as a man. She described an incident when Dr. Muhammad was upset about his mother when she grabbed his hand while speaking to him, remembering that staff did walk by. She agreed she spent time with him away from the clinic on professional matters such as recruiting, but that Dr. H and Dr. Muhammad asked her not to talk to staff about this project as it was none of their business.

In cross-examination, the staff schedule (Exhibit 15), time sheets (Exhibit 16) and the communications book were discussed. Ms Y agreed that all notes written to Ms X were during her probation period and addressed matters of filling in forms, where to place test results, a cash discrepancy, and billing codes. Similar issues were raised with other staff in the book, one specifically to Ms V and Ms J about physicians complaining about staff closing earlier than they were supposed to and about cash transactions. She agreed she wrote notes about Ms V's job performance in the book, in particular about closing early. When asked, she replied that "closing early wasn't necessarily a job performance issue....not as big as billing errors", but agreed she wrote job performance comments about Ms V, Ms J and Ms F in the book.

Ms Y agreed that there were notes to Ms X about job performance in the book, that they were similar to the notes addressed to other staff and that all the notes to Ms X were during her probation period. She said that subsequent job performance feedback to Ms X was verbal but that she continued to write job performance notes to Ms V in the book. She agreed this was because Ms X was protected, as she was friends with Ms V.

In addressing the matter of other employment, a note dated June 11, 2010, by Ms Y in the communications book was reviewed. It identifies the order to be followed in filling in available shifts. This note describes the other jobs held by each staff member, including Ms X (two part-time jobs), who was second on the priority list.

Ms Y agreed that the staff schedule for Clinic B identified the opening hour as 9:00 am and that on August 26 in the communications book, she asked Ms J to work at Clinic B on September 25 from 9:00 to 4:00. In cross-examination, Ms Y maintained that she was certain that in August, she spoke to all staff about starting before 9:00. She stated she used the term, "allowed to come half an hour early" on instruction from Dr. H, but stated she meant they were supposed to arrive half an hour early and that staff understood that; "to me it sounds like they had to come at 8:30."

Ms Y agreed that the staff schedule showed some shifts starting at 8:30 on weekdays and 9:00 on weekends, particularly the schedule of September 11, which showed Ms X's shift as starting at 9:00. At Clinic A, with the same 9:00 start time, the staff shifts are identified as starting at 8:30. It was pointed out and as seen on the video that on September 11, Ms X arrived at 9:00 and Dr. Muhammad at 9:11.

Counsel for the College suggested to Ms Y that she did not tell Dr. H that she was dissatisfied with Ms X's performance by the end of her probation. She replied that was wrong. When told that Dr. H testified he had never heard from Ms Y about Ms X's job performance, Ms Y stated, "because he's protecting her."

She agreed that the warning letter only addressed the two issues of turning one patient away and handling phone calls. She agreed that she only put in writing concerns to Dr. H about Ms X's billing errors after hearing of Ms X's allegations. She agreed that she felt the billing errors were Ms X's biggest performance issue. She acknowledged that none of the other job performance issues were mentioned in the letter. She stated that she mentioned these to Dr. H verbally, in particular the issue of closing the clinic early. When she was told Dr. H testified he could not recall if closing early had been a matter specific to Ms X, Ms Y stated, "when it comes to [Ms X], he would have a deaf ear."

Regarding the order of discussion when she met Dr. H on Monday September 13th, Ms Y maintained the conversation began with her saying she wanted to fire Ms X. It was pointed out that Dr. H testified that Ms Y only mentioned Ms X's work performance issues after he told her of Ms X's allegations. To this, Ms Y stated that Dr. H was still protecting Ms X and that in testifying to this matter, he was lying. She also said Dr. H was wrong when he denied that Ms Y told him she wanted to fire Ms X.

Ms Y acknowledged that she went unbidden to Workplace 2 in March 2011 to ascertain whether Ms X was working there and, after questioning an employee, a police complaint was laid alleging Ms Y had harassed the employee. She also agreed that in the month prior to the discipline hearing, Ms Y had gone on Ms X's Facebook page. She denied

knowing much about Facebook but agreed she had navigated through another employee's page to Ms X and then tagged herself in a photograph, but that it "was a mistake." When asked why she would be going on Ms X's facebook page she said, "just to see how the traumatized people are doing."

Testimony of Mr. K, Private Investigator

Mr. K, a private investigator, was retained by the defence to play a role in a sound test in the clinic. The Committee heard that when he was seated at the desk of the clinic with the usual sounds of a work day (TV, etc.) and listened, he could make out very little, "the odd word", of a normal speaking voice from the doctor's office. When the other investigator spoke in a louder voice, as if speaking with someone hard of hearing, he could pick out certain words and contexts.

FINDINGS

The Committee finds, on the balance of probabilities and in consideration of evidence that was clear, cogent and convincing that:

- prior to September 11, 2010, Dr. Muhammad engaged in conduct that was disgraceful, dishonourable or unprofessional conduct in his relationship with Ms X by making inappropriate comments to and about her; and
- that, on or about September 11, 2010, while Ms X was working at Dr. Muhammad's clinic, Dr. Muhammad made inappropriate and sexual comments to her and engaged in sexual abuse of her, including by touching her lips, hugging and kissing her and that this constituted the sexual abuse of a patient.

Therefore, Dr. Muhammad committed acts of professional misconduct as follows:

- under paragraph 1(1)33 of 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; and

- under clause 51(1)(b.1) of the Code, in that he has engaged in the sexual abuse of a patient.

REASONS FOR DECISION

Was there a doctor-patient relationship?

Although she had her own family doctor, Ms X attended Dr. Muhammad five times between December 2009 and July 2010 while working shifts at the walk-in clinic. The Committee finds those attendances fulfilled the criteria required to satisfy a doctor-patient relationship during this period of time.

On the key day in question, September 11, 2010, Ms X had a cut lip and Dr. Muhammad offered assistance which culminated in the provision of a remedy in the form of a cream. In the Committee's view, this limited assistance constituted part of an ongoing doctor patient relationship.

Furthermore, the Committee notes that in the closing submission of Dr. Muhammad's counsel, at paragraph 139, it is stated, "Nonetheless, Dr. Muhammad does not deny that there was an ongoing doctor/patient relationship with [Ms X]." It is further stated that, "Dr. Muhammad does not deny that if indeed he kissed [Ms X] and hugged her as she alleges, and made inappropriate comments he was alleged to have made, that this would constitute sexual abuse of a patient."

The Committee finds that Ms X was a patient of Dr. Muhammad from December 2009 to September 11, 2010.

The Allegations Related to comments made to and about Ms X prior to September 11, 2010

In the matter of inappropriate comments, Ms X described Dr. Muhammad asking her what she wore at her Workplace 1 job; if her Workplace 1 work was at a beach, whether she wore a bikini; and whether there were on-line pictures of her in beach wear. Ms X

also stated that Dr. Muhammad (who had treated Ms X's sister) once said, "You know, she looks like she would put up a fight if you were to throw her in the back of a vehicle."

Ms V's testimony was that Dr. Muhammad frequently said "Ooh [Ms X's first name]," when he asked about who he would be working with and heard that it would be Ms X. She testified that Dr. Muhammad told her that he liked working with Ms V and another employee (Ms J) because they were efficient but that he liked looking at Ms X and another employee (Ms S). Dr. Muhammad himself revealed that he found all the staff were good looking; that he discussed Ms X's "[Workplace 3] girl" outfits with Ms X; and, asked what she wore when working at Workplace 1 but he said she did not answer. Dr. Muhammad stated that he liked spending time with Ms X as a friend, a person, "not that we were strict like boss and subordinate."

The Committee finds that Dr. Muhammad did make the bikini comments and the comments about Ms X's sister to Ms X and the "Ooh [Ms X's first name]" comments to Ms V. Ms X's testimony about what he said about her sister was not contested nor was Ms V cross-examined about the "Ooh [Ms X's first name]" comments. As to the bikini comments, Dr. Muhammad admitted that he asked Ms X about what she wore to work at Workplace 1 and asked her about being a "[Workplace 3] girl." In this context, it seems clear to the Committee that he did ask about whether she wore a bikini and whether he could find pictures of her online. We accept the evidence of Ms X in this regard and she was not cross-examined on the point.

In order for there to be sexual abuse of a patient, the remarks must be "behavior or remarks of a sexual nature by the member towards the patient." The only sexual comments made prior to September 11, 2010 that were "*towards the patient*" (emphasis added) were the bikini and Workplace 3 girl comments. The "Ooh [Ms X's first name]" comments, while sexual in nature, were not made "towards the patient." The comments about Ms X's sister may have been "towards the patient" but they were not clearly sexual in nature, although they were inappropriate.

Further, on the evidence, the bikini and Workplace 3 girl comments were made sometime between September 2009 and September 2010 but it is not clear whether they were made before or after Ms X became a patient in December 2009. Accordingly, the College has not proven that these comments were made after Ms X became a patient in December 2009.

Nevertheless, the Committee is of the view that all of these comments taken together constitute disgraceful, dishonourable or unprofessional conduct. Although these comments were not the most egregious, they were clearly inappropriate comments for a doctor to be making to young female employees in his office.

In summary, the allegation of sexual abuse from comments made prior to September 11, 2010, is not proven, but the allegation of disgraceful, dishonourable and unprofessional conduct is proven.

The Allegations Related to the events of September 11, 2010

Ms X's description of what occurred on September 11, 2010 was detailed and clear. Unsure of what to do, she communicated almost immediately with a friend, describing briefly what had happened. Following advice from her friend's knowledgeable parent, she spoke with Dr. H that evening. Her description of what happened has subsequently remained consistent with one exception.

In all descriptions provided until her testimony, Ms X appeared to describe what happened as one incident. In her testimony before the Committee, she described it as occurring in two separate events, separated by an hour or two.

The Committee considered this variation carefully and concluded that while a significant inconsistency, it is not material enough to discount the veracity of the witness and her testimony when considered as a whole. In the first instance, whether the actions were alleged to have happened occurred in one or two incidents does not empower the position of the witness. There was no advantage to her to change her story. The actions alleged to

have happened occurred off camera. Ms X was in the office a number of times that morning and thus the actions could have occurred during one or two visits to the office. The Committee finds that it was most likely that Ms X described the actions she found of concern without consideration of whether they necessarily occurred continuously, then found herself bound to her initial version. When asked about the change in testimony, Ms X testified that “I guess I wasn’t clear in explaining it [in her earlier statements] and “it didn’t really seem like an important detail.” The Committee notes that in her written account, she never expressly stated that there was just one incident. The Committee notes that Ms V testified that when Ms X told her that evening all the details of what happened she described two separate incidents that day where Dr. Muhammad tried to kiss Ms X.

The inconsistency between her earlier statements and her testimony before the Committee must also be considered in the context of the evidence of all of the witnesses, including a consideration of the evidence and theory of the defence.

It is the position of Dr. Muhammad that Ms X anticipated being fired from her part-time job due to poor job performance and thus fabricated an incident of sexual abuse so that she would not be fired.

The Committee prefers the evidence of Ms X as to what occurred on September 11, 2010 and generally to that of Dr. Muhammad and Ms Y, and our reasons are set out below.

The Committee reviewed the video footage of that day which clearly shows Dr. Muhammad and Ms X at the drug cupboard and Dr. Muhammad giving something to Ms X before they both move into his office where they remain for 30 minutes, from 10:08 until 10:38 am. From 10:47 until 10:48, Ms X is in the staff room when she could have texted Ms V, consistent with the timing testified by Ms V and Ms X.

There are a number of times on the video footage that are consistent with Ms X and Ms V’s testimony that they spoke on the phone. There are also a number of other occasions

when Ms X is in Dr. Muhammad's office with him when the second incident could have occurred.

The Committee is persuaded that Dr. Muhammad liked Ms X. The video footage of the day in question shows him coming to the desk to chat frequently and spending time with her in the office. His demeanour and attitude are those of one comfortable with and interested in another. The evidence of witnesses the Committee found otherwise credible and from Dr. Muhammad himself, is that he discussed Ms X with others in a somewhat intimate fashion and spoke to Ms X about personal matters, such as the clothing she wore at her other jobs. The Committee was struck by Dr. Muhammad's testimony that he told Dr. H that he had not hugged or kissed Ms X and gave as one explanation apparently in support of this denial that if he had wanted to spend time with her, it was "very easy for me to ask her to go out with me."

The Committee was told that during this period and on this day in particular, Dr. Muhammad was upset about his mother's health in Pakistan. Ms X and Dr. Muhammad's testimony is in agreement that they discussed this in the office and that Ms X comforted Dr. Muhammad.

The video shows Dr. Muhammad and Ms X coming out into the hallway to get the cream from the cupboard. It does not show the cream being applied and there is a difference between Dr. Muhammad and Ms X on this point. Dr. Muhammad testified that Ms X applied it herself and that he did not hug or kiss her. Ms X says that Dr. Muhammad applied it all over her lips and not just on the cut area and then hugged and kissed her. The Committee is of the view that Dr. Muhammad did apply the cream. Dr. H's typed written notes refer to Dr. Muhammad telling Dr. H on September 13, 2010, that Dr. Muhammad had applied the cream. (Dr. H's initial handwritten notes said "went to cabinet and got Topicort, then back to office and apply.") Dr. H acknowledged in cross-examination that it was "possible" that that was not what Dr. Muhammad told him. Nevertheless, he did not disavow his notes and his testimony, and both the handwritten and typewritten notes together with Ms X's testimony and a consideration of all of the

circumstances lead the Committee to conclude that Dr. Muhammad did apply the cream as Ms X says he did.

The Committee is of the opinion that in this overall context, and while applying cream to Ms X's lip, it is more likely than not that in his vulnerable state related to his mother's illness, Dr. Muhammad did, indeed, hug Ms X and kiss her on the cheek and attempt to kiss her again, and made the comments attributed to him by Ms X about being attracted to her. This explanation of what occurred is far more likely than Ms X manufacturing the incident in an attempt to derail a job termination process that she had suddenly become aware of.

In considering and assessing Ms X's evidence and that of Dr. Muhammad and Ms Y it is helpful to consider Dr. Muhammad's defence. Dr. Muhammad's position is that Ms X fabricated the entire incident because she knew that her job was in jeopardy and, as his counsel put it in argument, "the best defence is a good offence." While the defence did not have to prove the reason for the alleged fabrication, they attempted to do so in this case and the Committee's view of this issue is that it strengthens the Committee's view that Ms X was truthful and credible in her account of that occurred on September 11, 2010 and that Dr. Muhammad has not been candid with respect to what he says happened. We also consider that Ms Y has not been truthful as to the discussions in the office on September 11 and her recollection of what she said to Dr. H on September 13 and on other occasions.

The issue related to the alleged fabrication by Ms X needs to be carefully considered to understand the impact it has on the credibility of Ms X, Dr. Muhammad and Ms Y. In order for the defence's theory to make sense, the following would have had to be true:

1. Ms X would have had to have thought that her job was in serious jeopardy;
 2. Ms Y and Dr. Muhammad would have had to have been discussing her impending firing on September 11 and Ms X would have had to have heard the discussion;
- and,

3. Ms X would have had to immediately settled upon a plan to accuse Dr. Muhammad of sexual abuse and holdfast in that position through the College's hearing into this matter, all with a view to keeping her job.

The Committee will consider each one of these propositions in turn.

Did Ms X think her job was in jeopardy?

The Committee is not convinced Ms X thought her job was in jeopardy. There is evidence that Ms X was not an exemplary employee and we accept she had motive to close the clinics as early as she could to get to her other job during the summer months, noting that others did so too and that corrective notes about that were directed to others, not her.

The Committee notes that performance matters were routinely addressed for all staff in the communications book, but that none concerning Ms X appeared after her probation period. One warning letter from Ms Y was sent, but it did not address the litany of deficiencies identified by Ms Y in her testimony, nor what she apparently thought was Ms X's most egregious deficiency, that of billing errors, a matter only raised with Dr. H after the day in question. A copy of this letter was not placed in her personnel file. Her co-worker Ms V said warning letters were "thrown around quite a bit."

Dr. H gave his testimony in a fair manner and we accept his testimony where it differs with Ms Y and Dr. Muhammad. He had no motivation to lie and it appears clear that he attempted to be an honest broker from the beginning and throughout. Furthermore, while struck by the calm, reasonable and internally consistent testimony of Dr. H, the Committee found the testimony of Ms Y to be inconsistent and often unreasonable. In addition, Ms Y was closely aligned in friendship with Dr. Muhammad and she gave her testimony in an argumentative manner. Her sarcastic statement that she was visiting the facebook page of Ms X "just to see how the traumatized people are doing" is but one example of how she approached her evidence in a biased manner. Her testimony that Dr.

H was lying to protect Ms X was not consistent with Dr. H's balanced and conscientious attempts to determine what had happened and to resolve the issue he was presented with.

Ms Y's testimony that she recommended to Dr. H that Ms X be terminated after her probation period was not supported by Dr. H. Dr. H testified that Ms Y never told him that Ms X's job performance was so bad that she should be fired and we accept this as the truth of what happened. He was aware of certain incidents drawn to his attention by Ms Y – phone calls not picked up, texting at work, but upon investigation found these to be pervasive and not just an issue about Ms X.

The suggestion was made by Ms Y that one of the reasons she was generally unhappy with Ms X was because she had two jobs and she had not previously known about this. Ms X's position is that the fact that she had two jobs was well known all along and that she believed she mentioned it at her initial interview with Ms Y. The Committee finds it believable that Ms X would have told Ms Y about her Workplace 1 job at her interview. She had no reason not to tell her. She was applying for a part-time job with flexible arrangements for scheduling. She knew others had part-time jobs elsewhere. It would seem reasonable that her Workplace 1 job would have been on her resume. Additional job experience is rarely omitted from a young person's resume when applying for another, especially a part-time, job.

The Committee finds that Ms Y knew about Ms X's other job at Workplace 1 from the outset. She certainly knew when she wrote up the order of calling staff to fill the vacancies in the schedule in August of 2010.

Another reason given for the general unhappiness of Ms Y and Dr. Muhammad with Ms X was that she was late generally and late on September 11, 2010. Again this is not borne out by the evidence taken as a whole. In regards to clinic start times, the Committee was not persuaded that Ms X and other staff were clearly instructed in late August 2010 to begin arriving by 8:30 am at Clinic B. Ms Y's testimony that they were told they were "allowed" to arrive earlier, the lack of alteration in start times in the schedule and Ms V's

recollection do not support the proposition that Ms X would have known she was transgressing job requirements when she arrived at 9:00 am on September 11, 2010.

Lastly, the issue of billing errors, the matter Ms Y describes as Ms X's most egregious problem, was only raised by her with Dr. H after the alleged incidents. The Committee reviewed the billing error analysis prepared by Ms Y (Exhibit 13) and notes that Ms X did have more errors than others. We also note that the number of errors by any staff member was relatively small in the context of the overall patient numbers and would not normally be considered exceptional.

The explanation of Ms Y, that post probation communications book notes about Ms X were lacking and her e-mail of September 13th made no mention of firing because of fear of Ms Q, was inconsistent with her willingness to write a warning letter and her stated intent to call for Ms X's firing verbally with Dr. H.

While the majority of Dr. Muhammad's testimony was given in a straightforward fashion, the Committee did find inconsistencies. Dr. Muhammad testified that he was consistently dissatisfied with Ms X's performance and that he repeatedly asked Ms Y to fire her. It was evident that he would have preferred professional, not student, staff. The Committee notes that notwithstanding his evidence, he rewarded Ms X with money, a Christmas gift and use of a Tim Horton's or car wash card for working well.

Dr. Muhammad stated he never expressed his dissatisfaction to Ms X directly since it was Ms Y's job and, ultimately Dr. H's to deal with staff performance. Even when distressed by what he described as poor performance, he described it was, "just a mention, just small hints that I was giving her."

The Committee found it hard to reconcile Dr. Muhammad's testimony, that he wanted Ms X fired, with his admitted absence of verbal feedback to her and friendly and rewarding behaviour toward her. In particular, on the day in question, he lingered frequently at the desk chatting in a friendly fashion with Ms X as clearly seen on the video footage, buying

her a coffee and sharing and eating his lunch with her, inconsistent with one who has just insisted on her being fired.

We obviously make no finding about the suggestion that Dr. Muhammad and Ms Y were having an affair. It is obvious that they were friends and the Committee need go no further. However, Dr. Muhammad prevaricated about his relationship with Ms Y. Despite (eventually) testifying he spent a lot of time with her and provided support to her and her daughter during court attendances and a custody dispute, he would not agree that he knew Ms Y was separated and stated he believed she was still married, and that he knew little of her personal situation. This the Committee found hard to believe and, indeed, Ms Y confirmed that he knew they were separated.

In regards to the events of September 11, and Dr. Muhammad's testimony that he was particularly upset by Ms X that morning, the Committee notes that by the time he arrived at Clinic At approximately 9:10 am that morning, it was open, patients had been registered and were waiting to be seen. From the video footage, all seemed ready for him, other than Ms X had yet to put out the open sign. There seemed little to be so distressed about. Dr. Muhammad testified that from outside the clinic, he could see that Ms X was tired, resting her head on her arm. The Committee viewed the video footage and reviewed the floor plan of the clinic. It is far from clear that Dr. Muhammad could either see, or was looking in the direction of Ms X as he approached and entered the clinic. In fact, the Committee was of the opinion that if she had had her head down on her arm, he would not have been able to see her from that vantage point at all. In fact, the video shows that she was on the phone, cradling it between head and shoulder, and in all other aspects was animated normally.

In summary, the Committee finds that in the informal work-place context described and in light of Ms Y's routine performance correction by a variety of means of all part-time unprofessional staff who had other jobs or studies, Ms X would not have been overly concerned about her job security, perhaps even less so because of her relationship with

Ms Q and in light of the steady expression of friendliness (as the Committee witnessed on the video footage) and occasional reward from Dr. Muhammad.

Were Ms Y and Dr. Muhammad discussing Ms X's termination on September 11, 2010 and, if so, did Ms X hear the discussion?

The Committee has concluded that there was no discussion between Dr. Muhammad and Ms Y on the morning of September 11 about firing Ms X and that the written record and other evidence confirms this conclusion. The basis for this conclusion is as follows:

- (1) The evidence of both Dr. Muhammad and Ms Y is that the circumstances of Ms X's performance had been building for some time and that somehow when Dr. Muhammad arrived at work on September 11, 2010 he became very upset because he thought the clinic had been open late as the sign was not outside and that Ms X was tired. In effect, Dr. Muhammad says that this was the last straw which led him to tell Ms Y that he wanted to get rid of Ms X. The Committee's finding as explained above is that there was no great building dissatisfaction with Ms X's performance leading up to September 11. That's not to say that she was considered a model employee. It is simply to say that there were some issues with her employment but they were no different than with many of the other employees employed from time to time;
- (2) Nothing happened on the morning of September 11 which might constitute a last straw for Dr. Muhammad;
- (3) Ms Y's e-mail of September 13th to Dr. H is extremely telling on this point and is contrary to the evidence of Ms Y and Dr. Muhammad that there was a discussion about firing Ms X on September 11, 2010. The September 13, 2010 e-mail was written before she was aware of the allegations and makes no mention of the need to fire Ms X. Rather it speaks to reducing her hours and that of Ms S and hiring additional staff in anticipation of exam time. The e-mail contemplates the ongoing employment of Ms X. Ms Y explanation for this is that she did not want to put the firing of Ms X in writing as it might be seen by Ms Q, but we do not accept this. According to Ms Y, she told Dr. H she wanted to fire Ms X in December 2009

- and told him on September 13, 2010 (both points the Committee rejects). Logic dictates that she would have no hesitation putting Ms X's proposed firing in an email;
- (4) Ms Y testified that in the discussion with Dr. Muhammad on September 11, she lost her temper and was yelling in frustration over being unable to persuade Dr. H to fire Ms X. In his testimony, Dr. Muhammad said nothing about her yelling and could not recall how loud he was speaking. In fact, Dr. Muhammad testified he may have been speaking in a low voice. If Ms Y was yelling, which seems a very unlikely thing to do with Ms X down the hall, one would think that Dr. Muhammad would have supported this in his testimony;
- (5) When Dr. Muhammad talked to Dr. H on September 13, 2010, when the allegations were first made known to him, Dr. Muhammad did not say to Dr. H that he had been discussing firing Ms X on September 11 with Ms Y and that Ms X must have overheard. This is notwithstanding the fact that Dr. Muhammad testified that throughout the day on September 11, he thought that she had overheard him saying he wanted to fire her. Also, according to the evidence of Dr. H which we accept, while Ms Y in her discussions with Dr. H on September 13 did raise issues about work performance issues of Ms X, she did not say to Dr. H that she and Dr. Muhammad had been discussing having Ms X fired. She did not say to Dr. H that she had been yelling about these issues on September 11 while Ms X was in the office. We are aware that Ms Y testified that she did say this to Dr. H but as mentioned above we reject this evidence. Dr. H did not support it in his testimony and had no note of it; and
- (6) The private investigator's test shows that some of a loud conversation in the doctor's office could be heard at the desk by someone actively listening for it. The Committee spent considerable time reviewing the video footage of the period during which this conversation is purported to have occurred. Ms Y left the desk area where Ms X was sitting and entered the doctor's office at 9:31.19. At 9:32.06, Dr. Muhammad comes to the front desk, leaving nine seconds later at 9:32.15. At 9:33, patients arrive and Ms X is seen speaking to them while registering them. Immediately thereafter, she is seen talking on the phone. At

9:39, Ms Y leaves and the Committee believes from the footage that she was smiling as she passed Ms X. During this entire period, there is no sign whatsoever that Ms X hears anything untoward; she does not turn her head in the direction of the office (nor do those patients standing at the desk right before her). She appears to have a normal, happy demeanour, and for nearly the entire time, is occupied with her regular work talking to patients or speaking on the phone. The video footage provides no evidence that Ms X (or patients) overheard the loud, impassioned conversation described by Ms Y and, in fact, the video evidence suggests otherwise.

In conclusion on this point, the Committee is of the view that there was no discussion about firing Ms X on the morning of September 11 and that if there was any discussion about Ms X's job performance, it was not overheard by Ms X.

Did Ms X immediately settle upon a plan to accuse Dr. Muhammad of sexual abuse and holdfast in that position through the College's hearing into this matter?

In order to support the position of the defence, the Committee would have to accept that it was probable that Ms X, hearing that she was about to be fired, suddenly manufactured an incident of abuse or embellished an innocent interchange; that she then shared this with her friend and indirectly with her friend's mother and then shared it with Dr. H. The Committee does not believe this is what occurred.

The suggested motivation for Ms X to lie was that she needed the job to pay her rent and other expenses and that she was prepared to fabricate all of these allegations with the theory that if she made these allegations she would keep her job. This makes no sense. It is apparent that Ms X had had part-time jobs before working at the clinics and she continued to have a second job at Workplace 1 while she was working there. After the events giving rise to these allegations, she almost immediately got another job in retail at Workplace 2. Further, she testified that her parents would have assisted her if she really needed the money and there is no reason to disbelieve this testimony. The Committee simply does not believe that Ms X made up these allegations with a view to keeping a

\$12 an hour job which she could apparently easily replace elsewhere. We are also aware that there is a human rights complaint and damages sought in connection with that case, but again, we do not accept that Ms X is pursuing this matter with a view to personal profit in the human rights case.

CONCLUSION

The Committee has concluded that Dr. Muhammad did make comments to and about Ms X prior to September 11, 2010, that constitute disgraceful, dishonourable and unprofessional conduct.

The Committee further concludes that on September 11, 2010, events occurred as Ms X says they did: Dr. Muhammad applied cream to her lips, hugged her and kissed her and attempted to kiss her again and made comments about her eyes and his attraction to her.

The Committee does not believe that Ms X thought her job to be in serious jeopardy, heard a purported discussion about her firing and then put forward a false allegation of sexual harassment to keep her job. Indeed the Committee has concluded that Dr. Muhammad has not been truthful in his denials of what occurred with Ms X on September 11, 2010. The Committee has also concluded that neither Dr. Muhammad nor Ms Y have been truthful in their account of the alleged firing discussion on September 11. There was no such discussion.

The Committee does agree that Ms X, while finding the matters she said occurred upsetting, did not think they were a very “big deal”. She was, however, worried that if she reported them she might lose her job. She was clearly not on the best of terms with Ms Y, thought Ms Y had a very close personal relationship with Dr. Muhammad, and the Committee found it would be reasonable for her to assume that she would be worried about Ms Y’s reaction to hearing that Dr. Muhammad had tried to kiss her.

It was also evident to the Committee that Ms X would have been content to receive an apology from Dr. Muhammad, have him attend some sort of harassment course and have a notice posted about what staff should do when confronted with harassment.

However, when Dr. H told Ms X that he could no longer play a resolution role, it seems clear that Ms X was persuaded by those supporting her to take the matter to another level, that of the College and the Human Rights Commission.

Notwithstanding that Ms X was Dr. Muhammad's patient for a series of minor, episodic illnesses, the Committee noted that the prime relationship between Dr. Muhammad and Ms X was that of employer-employee. The doctor-patient relationship was not one characterized by significant power imbalance or dependency in comparison to the employer-employee relationship. However, duties, obligations and boundaries exist in each and it is the opinion of the Committee that Dr. Muhammad violated those boundaries.

In summary, the Committee found, on the balance of probabilities, based on clear, cogent and convincing evidence, that the allegations that Dr. Muhammad sexually abused a patient on September 11, 2010, and that prior to that time he engaged in conduct relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, have been proved.

The Committee directs the Hearings Office to schedule a penalty hearing.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Naeem Hafiz Muhammad, this is notice that no person shall publish or broadcast the name or any information that could identify the identity of the complainant under subsection 47 of the Health Professions Procedural Code (the Code), which is Schedule 2 to the Regulated Health Professions Act, 1991.

The Committee also made an order under s.45(3) of the Code, prohibiting the publication of personal medical information of any patient of Dr. Muhammad.

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

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

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

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

Indexed as: Muhammad, N. H. (Re)

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. NAEEM HAFIZ MUHAMMAD

PANEL MEMBERS:

**DR. P. CHART (CHAIR)
D. GIAMPIETRI
DR. P. TADROS
S. BERI
DR. D. WALKER**

Penalty Hearing Date: May 9, 2013

Penalty Decision Date: May 9, 2013

Release of Written Reasons: June 3, 2013

PUBLICATION BAN

PENALTY AND REASONS FOR PENALTY

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario delivered its written decision and reasons on finding in this matter on February 14, 2013. The Committee found that Dr. Naeem Hafiz Muhammad has committed professional misconduct: in that he has engaged in the sexual abuse of a patient; and, 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.

The Committee heard evidence and submissions on penalty and costs on May 9, 2013, and delivered its penalty and costs order that day with written reasons to follow.

EVIDENCE AND SUBMISSIONS ON PENALTY

The Committee’s Decision of February 14, 2013

Dr. Muhammad is a family physician and jointly owned two walk-in clinics. Ms X was a part-time employee at the walk-in clinics. In addition, although Ms X had her own family doctor, she attended Dr. Muhammad as a patient in the clinics for episodic, minor complaints on five occasions between December 2009 and July 2010 at the time she was working a shift. Dr. Muhammad did not deny that there was an ongoing doctor-patient relationship.

In the Committee's decision of February 14, 2013, the Committee found that:

- Ms X was a patient of Dr. Muhammad from December 2009 to September 2010;
- Dr. Muhammad engaged in conduct that was disgraceful, dishonourable or unprofessional in his employment relationship with Ms X by making inappropriate comments to and about her. The comments included questions about what she wore to another job, whether she wore a bikini, and whether there were on-line pictures of her in beachwear. He would also comment "ooh [Ms X’s first

name]" to another person in the office when told that he was going to work with the complainant; and,

- On September 11, 2010, Dr. Muhammad engaged in the sexual abuse of a patient, Ms X, including by making sexual comments to her about her eyes and his attraction to her, and by applying cream to her lips, hugging and kissing her and attempting to kiss her again

Evidence on Penalty

College counsel provided the Committee with a victim impact statement (Exhibit 19) which was read into the record. The victim indicated that Dr. Muhammad's actions had caused her pain and anxiety, heightened levels of stress, financial concerns and strains on her personal relationships. She indicated in her statement that she has suffered from decreased self-esteem and has faced challenges in trying to complete her education.

Defence counsel provided the Committee with a Brief of Character Letters (Exhibit 20) and read portions of the letters to the Committee. The brief contained a number of letters which attest to Dr. Muhammad's reputation as a good and caring physician.

Joint Submission on Penalty

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. The proposed order included terms requiring: Dr. Muhammad to attend before the panel to be reprimanded; that his certificate of registration be suspended for a period of two months; that he complete, at his own expense, a College facilitated instruction in communications as set out in the Individualized Education Plan attached at Appendix A to the proposed order; that he reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, by July 9, 2013, in the amount of \$16,060.00; and that he pay costs to the College in the amount of \$25,550.00 by July 9, 2013.

Counsel for both parties were in agreement as to the guidelines and underlying principles related to penalty: that any penalty be commensurate with and express disapproval of the member's conduct; that it maintain public confidence in the profession and self-regulation; that it protect the public; that it address issues of general and specific deterrence; that it afford an opportunity for rehabilitation; and lastly, that it be seen to be fair, reasonable and appropriate.

College counsel presented a Brief of Authorities containing five previous cases considered by discipline panels, and she reviewed the range of penalties and reasons in those cases.

DECISION AND REASONS ON PENALTY

The Committee carefully considered the joint position of the parties on penalty. In considering whether to accept the joint submission, the Committee considered the victim impact statement, the aggravating and mitigating factors in this case, the decisions in other cases contained in the brief of authorities and the brief of character letters.

Although the Committee has the discretion to accept or reject a joint submission on penalty, the case law is clear that the Committee should accept a joint submission, unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute. The Committee is aware that the penalty proposed should properly address the guiding principles of protection of the public, disapproval and denunciation of wrongful conduct, maintenance of public confidence in the integrity and self-regulating capacity of the profession, specific and general deterrence, and the rehabilitative needs of the member, if applicable.

On May 9, 2013, the Committee agreed to accept the joint submission on penalty.

The facts in this case are that Dr. Muhammad took advantage of the power imbalance inherent in both an established employer-employee relationship and a doctor-patient relationship with a younger female employee/patient. In abusing his position, he brought the practice of his profession into disrepute.

The Committee recognized that the employer-employee relationship was the dominant, functional relationship in this matter. Nevertheless, Ms X was also his patient and the Committee was made aware through her victim impact statement of the effects of the member's behaviour on her.

The Committee considered as a mitigating factor that Dr. Muhammad engaged in the sexual misconduct at a time when he was in a vulnerable state due to his mother's illness. In addition, while recognizing that the character letters tendered in support of Dr. Muhammad have not been the subject of oral testimony or cross examination, they nevertheless demonstrate that Dr. Muhammad has a reputation as a good physician who is well respected by his patients, and this is also a mitigating factor.

The Committee finds that the proposed penalty expresses clear denunciation of the member's conduct. It addresses the need for public confidence in professional self-regulation by demonstrating the seriousness with which the College addresses the sexual abuse of patients. The reprimand and two month suspension are of great significance to the member and are intended to act as a deterrent, both specifically and generally. The Individualized Education Plan is consistent with the principle that a penalty should attempt to rehabilitate the member.

The Committee considered carefully the penalties in the cases presented in the Brief of Authorities and finds that the jointly submitted penalty is consistent with the prior cases presented.

Accordingly, the Committee accepted the jointly submission on penalty and found it to be fair, reasonable and appropriate in all of the circumstances.

ORDER

Therefore, the Discipline Committee ordered and directed, on the matter of penalty and costs, that:

1. Dr. Muhammad attend before the panel to be reprimanded.

2. the Registrar suspend Dr. Muhammad's certificate of registration for a period of two (2) months commencing immediately.
3. the Registrar impose the following term, condition and limitation on the certificate of registration of Dr. Muhammad:
 - i. Dr. Muhammad shall complete, at his own expense, College-facilitated instruction in communications as set out in the Individualized Education Plan attached at Appendix A to this Order.
4. Dr. Muhammad reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, by July 9, 2013, in the amount of \$16,060.00.
5. Dr. Muhammad pay costs to the College in the amount of \$25,550.00, by July 9, 2013.