NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Haider Hasnain, this is notice that the Discipline Committee ordered a ban on the publication, including broadcasting, of the name or any information that could identify the complainant pursuant to subsection 47(1) 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 47… is guilty of an offence and on conviction is liable,
>
> (a) in the case of an individual to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence; or
>
> (b) in the case of a corporation to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence.

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Hasnain, 2019 ONCPSD 2

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

IN THE MATTER OF a Hearing directed by
the Inquiries, Complaints and Reports Committee of the College of Physicians and Surgeons of Ontario
pursuant to Section 26(1) f 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. HAIDER HASNAIN

PANEL MEMBERS:

DR. B. LENT (CHAIR)
MS E.M. MILLS
DR. J. NICHOLSON
MR. P. GIROUX
DR. E. STANTON

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

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MS M. HENEIN
MS R. ZAIA

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R.W. COSMAN

PUBLICATION BAN

Hearing Date:	**July 4, 2018**
Decision Date:	**January 17, 2019**
Written Decision Date:	**January 17, 2019**

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard evidence and submissions regarding this matter at Toronto on July 4, 2018.

At the conclusion of the oral hearing, the Committee directed the parties to file written submissions and books of authorities on the retrospectivity issue regarding the amendment to the definition of patient in the Health Professions Procedural Code (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, and the application of Ontario Regulation 260/18 (“the Patient Criteria Regulation”), which both came into effect on May 1, 2018. Dr. Hasnain delivered written submissions on July 11, 2018, the College on July 17, 2018, and Dr. Hasnain delivered submissions in reply on July 20, 2018. Independent Legal Counsel (ILC) delivered a memorandum of advice to the Committee on July 23, 2018, and comments on that advice were filed on July 24, 2018.

The Committee reserved its decision on finding.

THE ALLEGATIONS

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

1. under clause 51(1)(b.l) of the Code in that he engaged in sexual abuse of a patient; and

2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act,1991("O. Reg. 856/93"), in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO THE ALLEGATIONS

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

OVERVIEW

The allegations of sexual abuse of a patient, and disgraceful, dishonourable or unprofessional conduct, arise out of a sexual relationship Dr. Hasnain had with Ms. Z from May 2009 to December 2009 or January 2010.

Dr. Hasnain is a family physician who owns the Tecumseh Community Care Centre ("the Clinic"). Dr. Hasnain acknowledged that he provided care to Ms. Z on February 6, February 10, September 1, September 3 and September 4, 2009 at the Clinic. Dr. Hasnain also acknowledged that he and Ms. Z engaged in a sexual relationship from May 2009 to December 2009 or January 2010.

The College submitted that the physician-patient and sexual relationships were concurrent, and therefore, the allegation of sexual abuse is established.

Dr. Hasnain denied the allegation of sexual abuse on the basis that there was no concurrent doctor-patient relationship at the time of the sexual relationship.

Dr. Hasnain submitted that:

a) There was no physician-patient relationship at any time. Ms. Z was treated by other physicians at the clinic, who were responsible for her care. The two February interactions with Dr. Hasnain were for minor conditions, and the three September interactions with Dr. Hasnain were brief and two were for minor conditions and one (September 3) was for emergency treatment. Therefore, these episodic interactions did not establish a physician-patient relationship with Ms. Z.

b) If a physician-patient relationship with Ms. Z arose as a result of the February interactions, it was not ongoing, i.e., it did not endure until their next interaction in September.

c) The September interactions did not establish a physician-patient relationship as they were incidental to the sexual relationship, [which began in May], and related to conditions that were minor or emergency in nature.

d) Even if the physician-patient relationship was established and continued beyond February, paragraph 2 of the Patient Criteria Regulation of May 1, 2018, which specifies conditions that must be met to determine that an individual is not a patient, applies retrospectively, such that Ms. Z is not a patient, and therefore, the allegation of sexual abuse is not proved.

THE ISSUES

This case raises the following issues:

1. Did Dr. Hasnain engage in sexual abuse of a patient?

    a) Was there an ongoing physician-patient relationship established between Dr. Hasnain and Ms. Z from February to September 2009?

    b) If a physician-patient relationship was established, was it concurrent with the sexual relationship?

2. Did Dr. Hasnain engage in conduct that would reasonably be regarded by members as dishonourable, disgraceful, or unprofessional?

FACTS AND EVIDENCE

THE FACTS

The following facts were set out in an Agreed Statement of Facts, which was filed as an exhibit at the hearing and presented to the Committee:

Background

1. Dr. Haider Hasnain is a 54-year-old family physician who received his certificate of registration authorizing independent practice in Ontario in 1992 and his specialist qualification in family medicine in 1994. His practice is located in the Windsor-Tecumseh area. Dr. Hasnain's CPSO number is 64959.

2. During the relevant period, Dr. Hasnain practiced out of the Tecumseh Community Care Centre ("the clinic"), providing service as a family physician at the clinic, including at the urgent-care clinic located in the same premises. Dr. Hasnain was the lessee for the clinic space.

3. The clinic operated on a shared chart system. All physicians treating a particular patient contributed to one global chart at the clinic. At the time, the charts were hand-written. In addition to Dr. Hasnain, who owned the clinic, four other physicians, Drs. B (a pediatrician), C, D and D, provided medical services to patients on a full-time basis. Two other physicians, Drs. F and G, provided medical services on a part-time basis.

4. Ms. Z is in her 50’s.

Medical treatment by clinic physicians other than Dr. Hasnain between June 2008 and January 2009

5. Between June 2008 and January 2009, Ms. Z was treated at the clinic by physicians other than Dr. Hasnain on several occasions for a variety of issues, including asthma, anxiety and concerns around a mammogram. The physicians include Drs. G, D, C and F. The treatment provided by physicians other than Dr. Hasnain during this period is reflected in the patient chart, Tab 2, Document Brief, pp. 2-5.

Treatment by Dr. Hasnain on February 6 and 10, 2009

February 6, 2009

6. On February 6, 2009, Ms. Z sought medical treatment at the clinic. She was initially seen by a nurse at the clinic who noted her observations of Ms. Z on the medical chart as follows: "pulse 60, increased lethargic, weight gain, depression, bp 106/60", (Chart, Tab 2, Document Brief, p. 5).

7. Dr. Hasnain was working in the urgent care area of the clinic and he provided treatment to Ms. Z. Dr. Hasnain noted in the chart that Ms. Z missed her previous menstrual cycle and that she was not sexually active at all. Dr. Hasnain requisitioned a blood sample. Dr. Hasnain's transcription of his note for February 6, 2009, is as follows:

> "missed period and states not sex active at all TSH, LH, FSH, DHEAS and Ferritin ordered by me"
> (Chart, Tab 2, Document Brief, p. 5; Transcription, Tab 3, Document Brief)

8. That same day, a laboratory technician at the clinic drew a blood sample from Ms. Z. The test results were faxed back to the clinic later that day. Dr. Hasnain submitted a claim to OHIP for an intermediate assessment, (A007 Code). Dr. Hasnain's claims submissions to OHIP for treatment of Ms. Z are at Tab 4, Document Brief.

9. Hematology results suggested that Ms. Z's iron levels were slightly below normal. A nurse reviewed this information with Ms. Z the following day.

February 10, 2009

10. On February 10, 2009, Ms. Z was seen again by Dr. Hasnain. Dr. Hasnain noted in the patient chart that Ms. Z previously experienced constipation when taking iron pills. Dr. Hasnain prescribed six vials of 2 ml iron injections. The prescription for iron ("Infufer") dated February 13, 2009, is at Tab 6, Document Brief. Dr. Hasnain submitted a claim to OHIP for a minor assessment, (A001 Code), OHIP, Tab 4, Document Brief.

11. Dr. Hasnain's note in the chart for February 10, 2009, is as follows:

> "states low iron and constipation with pills, advised injections, (told me) of cholesterol and well".
> (Chart, Tab 2, Document Brief, p. 6; Transcription Tab 3, Document Brief)

12. On February 19th and February 24th, 2009, a nurse at the clinic administered two iron injections to Ms. Z, as previously directed by Dr. Hasnain and as recorded in the patient chart. (Chart, Tab 2, Document Brief, p. 7)

Treatment by other physicians: February 2009-May 2009

13. Ms. Z received medical treatment from Dr. G and other clinic physicians for various issues between February 2009 and May 2009. According to her patient chart, Ms. Z saw Dr. G on three occasions between February 2009 and April 2009 for gynecological issues including a pap smear and a referral to Dr. J, a specialist gynecologist. During March and April 2009, Ms. Z was treated by four other clinic physicians on four occasions for complaints including throat infections, (Chart, Tab 2, Document Brief, pp. 8-10).

The sexual relationship between Dr. Hasnain and Ms. Z: May 2009 to December 2009/January 2010

14. Sometime in May 2009, Ms. Z and Dr. Hasnain commenced a consensual sexual relationship. The relationship spanned from May 2009 to either December 2009 or January 2010 and included approximately 8-10 occasions of mutual oral sex and one occasion of sexual intercourse, as well as other sexual activity such as mutual sexual touching. All of the sexual interactions occurred in one room within the clinic, with the exception of one encounter that occurred elsewhere in the clinic. The final sexual encounter was the act of sexual intercourse that took place either in late December 2009 or early January 2010.

Treatment by physicians other than Dr. Hasnain: June 2009 to January 2010

15. After the commencement of the sexual relationship with Dr. Hasnain, Ms. Z received treatment from G on August 23, 2009, for anxiety. Ms. Z was provided with a prescription for Celexa. Ms. Z also saw another clinic physician, Dr. E, on September 10, 2009, December 28, 2009, December 31, 2009 and January 8, 2010, regarding asthma and throat symptoms and back pain as set out in the patient chart (Chart, Tab 2, Document Brief, pp. 12, 14-16); (OHIP, Tab 5, Document Brief).

Treatment by Dr. Hasnain after the commencement of the sexual relationship

16. Following the commencement of the sexual relationship in May 2009, Dr. Hasnain provided treatment to Ms. Z on three occasions in September 2009 and provided a prescription on one occasion in August 2009. The treatments provided in September 2009 were provided within the urgent care area of the clinic, at times when Dr. Hasnain was the only assigned physician.

Prescription - August 6, 2009

17. On August 6, 2009, Ms. Z filled a prescription for Valtrex issued by Dr. Hasnain. There are no chart or OHIP entries related to this prescription. A copy of the prescription is attached at Tab 6, Document Brief.

September 1, 2009

18. On September 1, 2009, Dr. Hasnain provided treatment for Ms. Z, recorded as follows in her patient chart:

> "Bloodwork re alopecia, assessment, alopecia and get blood work results first". (Transcription, Tab 3, Document Brief; Patient Chart, Tab 2, Document Brief p. 13)
>
> Ms. Z consented to the release of her most recent bloodwork results, which had been requisitioned by Dr. J, referred to in paragraph 13 above.

19. On September 1, 2009, Medical Laboratories of Windsor forwarded the lab results, originally requested by Dr. J, to the clinic. After reviewing the results some time that night or the next day Dr. Hasnain wrote on the bottom of the fax coversheet from Medical Laboratories, "See Dr. G." (Chart, Tab 2, Document Brief, p. 49). Dr. Hasnain submitted a claim to OHIP for a minor assessment, (A001 Code), (OHIP, Tab 4, Document Brief).

September 3, 2009

20. On September 3, 2009, Ms. Z advised one of the nurses that she was experiencing "chest pains". Dr. Hasnain was the only physician in the clinic at the time. Dr. Hasnain ordered an EKG. The results of the EKG revealed no abnormalities. Dr. Hasnain made the following notes on Ms. Z's medical chart:

"states history of arrhythmia and occurs a bit, and abdominal pain on and off, well and dizzy +++, observed no acute distress and assess well and EKG normal" (Chart, Tab 2, Document Brief, p. 13; Transcription, Tab 3, Document Brief)

21. A claim was submitted to OHIP by Dr. Hasnain as a minor assessment, (A001 Code). (OHIP, Tab 4, Document Brief)

September 4, 2009

22. On September 4, 2009, at approximately 11:39 a.m., a nurse wrote "f/u [follow up] re: bloodwork" in Ms. Z's chart. Dr. Hasnain's notes in Ms. Z's medical chart states:

"well, observed not acutely distressed and assess as well and second set of labwork ordered re alopecia and anemia", (Chart, Tab 2, Document Brief, p. 14; Transcription, Tab 3, Document Brief).

23. A blood sample was drawn at the clinic on that day. Dr. Hasnain reviewed the results that night or the next day and wrote "let her know" on the results to advise the nurses to share the iron level results with Ms. Z. Dr. Hasnain submitted a claim to OHIP for a minor assessment, (A001 Code), (OHIP, Tab 4, Document Brief).

24. The OHIP record notes a service date of September 5, 2009. (OHIP, Tab 4, Document Brief). The parties agree that the OHIP claim for a service date of September 5, 2009, reflects the visit of September 4, 2009, recorded in the patient chart.

Videos of Appointments

25. Ms. Z commenced videotaping her encounters with Dr. Hasnain, including sexual encounters, as of June 5, 2009 without his knowledge. Ms. Z videotaped the medical encounters on September 1, 3 and 4, 2009.

26. The Videos of the appointments, filed on consent as exhibits in this hearing, demonstrate that the appointments lasted the following length of time:

Appointment of September 1, 2009 - 1 minute and 46 seconds
Appointment of September 3, 2009 - 1 minute and 10 seconds
Appointment of September 4, 2009 - 2 minutes and 21 seconds

EVIDENCE

In addition to the video clips from three patient encounters between Dr. Hasnain and Ms. Z, various additional exhibits were filed, including: the clinical record of Ms. Z from June 21, 2008 to January 8, 2010; a lease agreement dated May 16, 2008 between Dr. Hasnain and Ms. Z; OHIP claims for Dr. Hasnain's treatment of Ms. Z from January 1, 2008 to August 21, 2013; OHIP claims for all other providers of treatment of Ms. Z from January 1, 2009 to January 31, 2010; and prescriptions written by Dr. Hasnain for Ms. Z, as contained in an agreed book of documents.

There were no witnesses called by either party.

THE LAW AND LEGAL ISSUES

Burden and Standard of Proof

The College has the burden of proving allegations of professional misconduct against the member. The standard of proof is on a balance of probabilities (i.e., whether it is more likely than not that the alleged conduct occurred) based upon evidence admitted at the hearing, which is clear, cogent and convincing (*F.H. McDougall*, [2008] S.J.C. No. 54 40, 45-49).

Definition of Sexual Abuse of a Patient

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

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

Subsection 1(4) of the Code qualifies that "sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

It is not disputed that Dr. Hasnain and Ms. Z engaged in the type of sexual acts that are captured by subparagraphs 1(3)(a) and (b) of the Code.

However, to fall within the meaning of the sexual abuse as defined in the legislation, the Discipline Committee must find that the sexual relations occurred between a physician and a patient. The Discipline Committee cannot make a finding of sexual abuse if a physician engages in sexual relations with someone who was not a patient at the time that the sexual relations took place. As noted in *Leering* at para 37, "The disciplinary offence of sexual abuse is defined in the Code for the purpose of these proceedings as the concurrence of a sexual relationship and a

health care professional-patient relationship. There is no further inquiry once those two factual determinations have been made."

Therefore, the overarching issue in this case is whether or not the health care services that Ms. Z received from Dr. Hasnain gave rise to a physician-patient relationship and if so, whether there was a concurrent physician-patient relationship and sexual relationship.

Determination whether an Individual is a Patient

At the time of the alleged misconduct, and until May 1, 2018, the legislation did not define the term "patient." The determination whether an individual was a patient of a member was a factual inquiry and subject to interpretation by the Discipline Committee. The Committee was guided by and considered a variety of factors as outlined in the *College of Physicians and Surgeons of Ontario v. Redhead, C.A,* 2013 ONCPSD 18. The list of factors (listed below) in *Redhead* is not exhaustive; nor do all the factors need to be present, in order for the Committee to make a determination that an individual is a physician's patient. The factors include:

a) whether the physician had a patient file for the patient, including history, physical examination, diagnosis, plan of management, prognosis, diagnostic imaging reports, and a written record of treatments;
b) whether there were OHIP billing records for services provided by the physician to the patient;
c) the number and nature of treatments received by the complainant from the patient, and the location in which those treatments were received;
d) whether any of the medical services involved psychotherapy;
e) whether the complainant ever received a consent-to-treatment form;
f) whether there was any documentary evidence in which the physician referred to the complainant as his or her patient;
g) whether there were any letters of consultation written to the complainant's primary physician;
h) whether there were any letters reporting back to the physician about the complainant;

i) whether the complainant was seeing other physicians, and, in particular, whether the complainant had her own family physician when the sexual relationship began;
j) whether the physician referred the complainant to other professionals; and
k) whether the physician prescribed medication to the complainant under his or her signature.

On May 1, 2018, legislative amendments came into effect, including subsection 1(6) of the Code, which provides a definition of the term patient. Subsection 1(6) of the Code states:

> (6) For the purposes of subsection (3) and (5),
>
> "patient", without restricting the ordinary meaning of the term, includes,
>
> (a) an individual who was a member's patient within one year or such longer period of time as may be prescribed from the date on which the individual ceased to be the member's patient, and
>
> (b) an individual who is determined to be a patient in accordance with the criteria in any regulations made under clause 43 (1) (o) of the *Regulated Health Professions Act, 1991*; ("patient")

Ontario Regulation 260/18 ("the Patient Criteria Regulation") also came into effect on May 1, 2018 and prescribes criteria to be considered in determining whether an individual is a patient under subsection 1 (6) of the Code. It states:

> 1. The following criteria are prescribed criteria for the purposes of determining whether an individual is a patient of a member for the purposes of subsection 1(6) of the Health Professionals Procedural Code in Schedule 2 of the Act:
> 1. An individual is a patient of a member if there is direct interaction between the member and the individual and *any* of the following conditions are satisfied:

i) The member has, in respect of a health care service provided by the member and the individual, charged or received payment from the individual or a third party on behalf of the individual.

ii) The member has contributed to a health record or file for the individual.

iii) The individual has consented to the health care service recommended by the member.

iv) The member prescribed a drug for which a prescription is needed to the individual.

2. Despite paragraph 1, an individual is not a patient of a member if *all* of the following conditions are satisfied:

i) There is, at the time the member provides the health care services, a sexual relationship between the individual and the member.

ii) The member provided the health care service to the individual in emergency circumstances or in circumstances where the service is minor in nature.

iii) The member has taken reasonable steps to transfer the care of the individual to another member or there is no reasonable opportunity to transfer care to another member.
(*Emphasis added*)

The overarching objective of the legislation, together with the policies of the College, is the protection of the public. There is a zero tolerance for sexual abuse of a patient. The legislation was enacted to protect patients from sexual abuse by physicians. Given the physician is in a position of trust and power in a physician-patient relationship, the physician is duty-bound to act in the patient's best interests. As stated in *Leering,* the purpose of the provisions of the Code is to

prevent health care professionals from using the power imbalance between themselves and patients to obtain consent to sexual activity. Furthermore, sexual activity and romantic interactions interfere with the physician-patient relationship.

As outlined in the College's policy, *Maintaining Appropriate Boundaries and Preventing Sexual Abuse*, "trust is the cornerstone in the physician-patient relationship." When a patient seeks care from a physician, the patient trusts that the physician is a professional and, as such, will treat the patient in a professional manner. When a physician sexualizes the physician-patient relationship, it is a clear breach of trust. The policy also states that a power imbalance exists in the doctor patient relationship in favour of the physician

ANALYSIS

There is no dispute that Dr. Hasnain and Ms. Z were in a sexual relationship from May 2009 until either late December 2009 or early January 2010 and that the sexual relationship included mutual oral sex, intercourse and other sexual activity such as mutual sexual touching [para.14 of the Agreed Statement of Facts].

The issue is whether Dr. Hasnain was in a physician-patient relationship at the same time he was in a sexual relationship with Ms. Z.

The Committee considered whether Ms. Z was a patient of Dr. Hasnain using the analytical approach adopted in the case law prior to the legislative amendments coming into effect on May 1, 2018. This included a consideration of the factors outlined in *Redhead*.

The Committee also considered whether Ms. Z was a patient of Dr. Hasnain by retrospectively applying the new definition of patient in the Code and the criteria in the new Patient Criteria Regulation.

While the amended legislation codified the definition of "patient" to provide clarity and minimize ambiguity in situations where tribunals are tasked to determine whether a physician-

patient relationship existed, the Committee notes that the Patient Criteria Regulation does not introduce any new “factors” or “conditions” that were not noted in *Redhead* or previously considered by the Committee in determining whether an individual is a patient. *Redhead* factors a), b), e) and k) are the four conditions in the Patient Criteria Regulation.

However, where discipline committees often required more than one factor to be present to make a determination that an individual was a patient, the Patient Criteria Regulation requires a direct interaction between the individual and the member and that only **one** of the four conditions specified be present in order to find that an individual is a patient. In other words, the patient criteria now in regulation are more exacting than the criteria used by discipline committees to determine whether an individual was a “patient” prior to May 1, 2018.

The Committee also notes that in order to make a finding that an individual is not a patient of a member, all three conditions in paragraph 2 of the Patient Criteria Regulation must be met, including that “there is at the time the member provides the health care services, a sexual relationship between the individual and the member.” This first condition makes it clear that if the physician is in a sexual relationship with an individual at the time that the physician provides health care services to that individual, the condition is satisfied; it is not necessary that the sexual relationship is in the nature of a spousal or spouse-equivalent relationship. However, the other two conditions under paragraph 2 of the regulation must also be satisfied for the exception to apply.

Issue 1 - Did Dr. Hasnain engage in sexual abuse of a patient?

a) Was there an ongoing physician-patient relationship established between Dr. Hasnain and Ms. Z from February to September 2009?

I. Application of pre-May 1, 2018 Legislative Amendments Analytical Approach

In its determination whether a physician-patient relationship was established between Dr. Hasnain and Ms. Z, the Committee considered the nature of the health care services provided by Dr. Hasnain to her and the context in which those services were provided.

The Committee also considered the *Redhead* factors, which are repeated below:

a) whether the physician had a patient file for the patient, including history, physical examination, diagnosis, plan of management, prognosis, diagnostic imaging reports, and a written record of treatments;
b) whether there were OHIP billing records for services provided by the physician to the patient;
c) the number and nature of treatments received by the complainant from the patient, and the location in which those treatments were received;
d) whether any of the medical services involved psychotherapy;
e) whether the complainant ever received a consent-to-treatment form;
f) whether there was any documentary evidence in which the physician referred to the complainant as his or her patient;
g) whether there were any letters of consultation written to the complainant's primary physician;
h) whether there were any letters reporting back to the physician about the complainant;
i) whether the complainant was seeing other physicians, and, in particular, whether the complainant had her own family physician when the sexual relationship began;
j) whether the physician referred the complainant to other professionals; and

k) whether the physician prescribed medication to the complainant under his or her signature.

The Agreed Statement of Facts and the medical record indicate that Dr. Hasnain saw Ms. Z on five occasions in his clinic on February 6, February 10, September 1, September 3, and September 4, 2009. In addition to the five office visits documented in the medical record, Dr. Hasnain also wrote a prescription for Ms. Z on August 6, 2009 for Valtrex [Valacyclovir], which was not documented in the medical record.

Dr. Hasnain's notes are extremely brief, but it is clear from the medical record for all of the appointments, and the video recordings of the three September visits, that Dr. Hasnain took a history of presenting complaints, conducted medical assessments, reviewed blood pressure, and conducted physical examinations, including auscultating the heart, and scalp examinations. During the period Dr. Hasnain provided health care services to Ms. Z, Dr. Hasnain ordered diagnostic testing and interpreted the test results, made diagnoses and developed treatment plans, which included prescribing medications for her. He also documented Ms. Z's history and findings in her medical record, including that she had missed her previous menstrual cycle, was lethargic, gained weight, had low iron, alopecia (hair loss), an arrhythmia, a lack of sexual activity, depression, constipation and abdominal pain. In addition, it is clear from the record that Dr. Hasnain followed up the investigations he ordered for Ms. Z and billed OHIP for the medical services provided to Ms. Z at the five clinic visits.

All five patient encounters occurred in a professional environment, in Dr. Hasnain's clinic, where Ms. Z had an office. The agreed facts indicate that the three September encounters occurred in the urgent care area of the clinic. In the Committee's view, it is the nature of the patient's condition and the nature of the health services provided that are the key factors in determining whether treatment was incidental, minor or emergency in nature, as opposed to the area of the clinic where service was rendered.

On reviewing the Agreed Statement of Facts, the evidentiary record and the video recordings, the Committee notes that:

i) There was a shared medical record for Ms. Z in which Dr. Hasnain recorded a history, physical examination, diagnosis, plan of management, laboratory reports and documentation of treatments provided, including the iron injections prescribed by Dr. Hasnain (*Redhead* factor a)).

ii) There were OHIP records for services provided by Dr. Hasnain to Ms. Z for which he billed on each of the five office visits. (*Redhead* factor b)).

iii) Dr. Hasnain saw Ms. Z for various complaints on five occasions, February 6 and 10, and September 1, 3 and 4, 2009. All visits occurred in a professional setting at Dr. Hasnain's clinic and the visits included at least two follow-up visits, on February 10, 2009 and September 4, 2009, for previous findings (*Redhead* factor c)).

iv) In addition to prescribing iron injections on February 10, 2009, Dr. Hasnain wrote a prescription Valtrex for Ms. Z on August 6, 2009 (*Redhead* factor k)).

v) Dr. Hasnain not only made a diagnosis of low iron levels (iron deficiency) based upon the blood work he ordered on February 6, 2009, but also followed up Ms. Z on February 10, 2009 for the iron deficiency and prescribed iron injections for her, which were administered by a nurse on February 19 and 24, 2009, and notes in the medical record "as per Dr. Hasnain" (*Redhead* factors c) and k)).

vi) Based upon the medical record, Dr. Hasnain was the only physician at the clinic to diagnose Ms. Z's iron deficiency, follow-up and treat her for iron deficiency and recheck Ms. Z's iron levels (ferritin) following her iron injections, which he did on September 4, 2009. There is no evidence in the chart or otherwise that Dr. Hasnain instructed Ms. Z to follow-up with another physician or that Dr. Hasnain arranged for another physician to follow up Ms. Z following the diagnosis and treatment of her iron deficiency (*Redhead* factor j)).

vii) There was no evidence in the chart or otherwise that Dr. Hasnain requested Ms. Z to follow up with another physician or arranged with another physician to follow her up following his assessment of her on September 1 for alopecia, following his assessment on September 3, 2009 for her complaints of abdominal pain, dizziness and arrhythmia, or following the results of a blood test for a ferritin level that indicated depleted iron stores on September 4, 2009. The Committee does note that Dr. Hasnain made the notation "let her know" [the results] on the September 4, 2009 blood work results, but there is no indication in the medical record or on the blood work results that Dr. Hasnain requested Ms. Z or another physician to follow up the ferritin level (*Redhead* factor j)).

viii) The Agreed Statement of Facts states that on September 3, 2009, Ms. Z advised a nurse that she was experiencing "chest pains." It is unclear from the Agreed Statement of Facts whether Ms. Z was experiencing "chest pains" sometime prior to, or at the time, she was speaking with the nurse. The nurse did not make a note in the chart. Furthermore, the Committee notes that there is no mention in Dr. Hasnain's clinical note on September 3, 2009 that Ms. Z was experiencing chest pain. Dr. Hasnain's note states, "States history of arrhythmia and occurs a bit, and abdominal pain on and off, well and dizzy+++, observed in no acute distress and assess well and ekg normal." The Committee notes that Dr. Hasnain billed for only a minor assessment, which suggests he did not treat it as urgent or an emergency. On reviewing the video recording of the September 3, 2009 visit, there is no appearance of a sense of urgency on Dr. Hasnain's part and the encounter was very brief, lasting approximately two minutes and twenty-one seconds. The College Policy, *Treating Self and Family Members*, published February 2007, that was in effect at the time states, "An "emergency" exists where an individual is apparently experiencing severe suffering or is at risk of sustaining serious bodily harm if medical intervention is not promptly provided." On reviewing the clinic notes and the video, the Committee determined that this visit was not in the nature of an emergency (*Redhead* factor c)). The Committee notes it states in paragraph 49 of Dr. Hasnain's written submissions

that “Dr. Hasnain was hesitant to see Ms. Z,” but there were no agreed facts or evidence of this before the Committee.

ix) On September 1, 2009, Dr. Hasnain requested blood work results from Dr. J which, according to the time stamp on the faxed reports, are faxed to Dr. Hasnain on September 1, 2009 at 6:17 p.m. Dr. Hasnain noted on the fax to “see Dr. G” which would make sense as it clearly states on that lab report under “Copy to” that Dr. G was to receive a copy of the report. This, in the Committee’s opinion, does not constitute a transfer of care of a patient but simply forwarding a copy of lab report that Dr. G was intended to receive (*Redhead* factor j).

x) On September 4, 2009, Dr. Hasnain saw Ms. Z in his office. In the September 4th note, the nurse clearly writes, “F/U re Bloodwork.” It is not clear to the Committee, nor is it noted in the medical record, what blood work is being referred to. The only recent blood work results received by Dr. Hasnain were on September 1, 2009, which were the blood work results originally ordered by Dr. J. The Committee notes that what is clearly written by the nurse “F/U re bloodwork” in the medical record is not consistent with Dr. Hasnain’s “transcription” of the nurse’s note where Dr. Hasnain states the nurse wrote “associate wants follow up re lab work.” Moreover, contrary to Dr. Hasnain’s counsel’s position, there is no evidence in Dr. Hasnain’s clinical note of September 4, 2009 that Ms. Z requested that Dr. Hasnain repeat her bloodwork (*Redhead* factor c).

xi) Dr. Hasnain received implied consent from Ms. Z to the health care services by him. While there is no evidence that there was a written consent, the Committee finds that there was implied consent given Ms. Z sought medical treatment at the clinic, Dr. Hasnain attended her, she submitted to the health care services recommended by him and agreed to the treatment he prescribed (*Redhead* factor e)).

Based on these factors, the Committee finds that an ongoing physician-patient relationship was established between Dr. Hasnain and Ms Z on February 6, 2009 and continued until at least September 4, 2009.

In further support of the ongoing nature of the physician-patient relationship, clinical notes establish that on February 6, 2009, Dr. Hasnain saw Ms. Z in regard to lethargy, weight gain, depression, and feeling sleepy and lazy. Dr. Hasnain ordered a battery of blood tests including a TSH, LH, FSH, DEHEAS, glucose, hemoglobin A1C, Vitamin B12, estradiol, as well as a CBC.

It is the physician's responsibility to ensure abnormal blood work results for blood work that is ordered by the physician are followed up. There is no indication in Dr. Hasnain's February 6, 2009 clinical note that he instructed Ms. Z to follow-up the extensive blood work results with any other physician at the clinic, or that he arranged with any other physician, including Dr. G, to follow-up the blood work results. In fact, the hand written notation that appears on the results of the blood work ordered by Dr. Hasnain on February 6, 2009 states "PTN re 02/10/2009 re LM" together with a circle around "REVIEW, COME IN," which indicates to the Committee that when Dr. Hasnain reviewed the blood work results, he intended to follow-up Ms. Z himself, and which he did on February 10, 2009. On February 10, 2009, Dr. Hasnain made a diagnosis of "low iron" (iron deficiency). Having made the diagnosis of iron deficiency, Dr. Hasnain prescribed iron injections for Ms. Z, a drug for which a prescription is needed, which a nurse administered as per Dr. Hasnain's instruction on February 19, 2009, and then again on February 24, 2009.

In addition to following up abnormal blood work, it is also a physician's responsibility either to follow-up the efficacy of the treatment that is prescribed by him, or to ensure that there is follow-up by another physician. If Dr. Hasnain did not want to follow-up the efficacy of his treatment for iron deficiency, it was his responsibility to either instruct Ms. Z to follow up with another physician, or to personally arrange to have another physician follow up Ms. Z.

Dr. Hasnain had more than one opportunity - on February 6, 2009 after the initial diagnosis of iron deficiency was made, on the February 10, 2009 follow up appointment and following the

iron injections – either to instruct Ms. Z to follow-up with another physician at the clinic, or to arrange for another physician to follow-up Ms. Z's iron levels. According to the medical record, there is no notation by Dr. Hasnain that he did either.

Furthermore, the Committee finds after careful review of the chart that there is no evidence that any other physician who saw Ms. Z at the clinic noted in their clinical notes that there was a diagnosis of iron deficiency, treated Ms. Z for iron deficiency or ordered follow-up ferritin (iron) levels for Ms. Z following the iron injections. The only physician at the clinic who treated Ms. Z for iron deficiency and followed-up Ms. Z's iron levels following the iron injections was Dr. Hasnain, who reordered a ferritin level when he saw Ms. Z on September 4, 2009.

Also, there are no notations in the chart for any of the five office visits to indicate that Dr. Hasnain took any of the steps that are required by the College policy "Ending the Physician-Patient Relationship," to end the physician-patient relationship that he commenced with Ms. Z on February 6, 2009.

Moreover, having ordered a repeat ferritin level on September 4, 2009, which demonstrated that Ms. Z had depleted iron stores, there is no notation in the medical record that Dr. Hasnain instructed Ms. Z, or personally arranged for another physician to follow-up the abnormal blood work. The only notation on the lab work result was "let her know."

Dr. Hasnain's counsel submitted that on September 10, 2009, Dr. E followed-up the blood work results that Dr. Hasnain ordered on September 4, 2009. In reviewing the clinical record, the Committee cannot come to that conclusion, as it is not clear which lab results were being reviewed on September 10, 2009 by Dr. E. In Dr. E's clinical note, there is reference to a Pap [smear] and "lab inconclusive" with a queried diagnosis of "? premenopausal." Given the queried diagnosis of premenopausal, the Committee finds that Dr. E was reviewing the blood work originally ordered by Dr. J that was requested and received by Dr. Hasnain on September 1, 2009, which indicated the estradiol and FSH levels were in the "postmenopausal" range. Notably, there is no reference in Dr. E's note to a ferritin level, which would be expected given the blood work ordered by Dr. Hasnain indicated that Ms. Z had depleted iron stores.

The fact that Dr. Hasnain was the only physician at his clinic who, in February 2009, made the diagnosis of iron deficiency, initiated treatment for iron deficiency and ordered a repeat ferritin level in September 2009, is sufficient evidence to establish that the physician-patient relationship that commenced in February 2009 between Dr. Hasnain and Ms. Z continued until at least September 4, 2009.

In addition to the iron deficiency, Dr. Hasnain assessed and treated Ms. Z for other medical conditions during her office visits, which further supports the finding that there was an ongoing physician-patient relationship between February and September 2009.

Dr. Hasnain's Submissions

Dr. Hasnain's counsel submitted that their position that a physician-patient relationship did not exist between Dr. Hasnain and Ms. Z is supported by the following: i) that Dr. Hasnain did not see Ms Z for patient clinic visits between February and September 2009 and ii) that Ms Z saw other physicians at the clinic during that period. The Committee does not accept this submission.

Gap in Visits with Dr. Hasnain

The Committee notes that in addition to the two office visits in February and the three office visits in September, Dr. Hasnain treated Ms. Z in August 2009 by prescribing Valtrex to her.

It is the Committee's common knowledge and experience that there may be many months and, in some cases, years between office visits, even when a patient has a designated family physician. The Committee finds that Ms. Z did not have a designated family physician at the clinic. In the interim period when a patient is not attending one physician regularly, the patient may be attended to by other physicians. In the Committee's opinion, an interval of six or seven months between office visits with a physician is not, by itself, determinative that a physician-patient relationship did not exist, or had ended.

Treatment by Other Physicians

In taking the position that Ms. Z was not a patient of Dr. Hasnain, Dr. Hasnain's counsel points to the other physicians treating Ms. Z at the clinic, with a specific reference to Dr. G.

Dr. Hasnain's counsel notes the phrase "Thank you for referring your patient" appears on radiology reports sent to Dr. G and submits that this is evidence that Ms. Z was Dr. G' s patient. In the Committee's knowledge and experience, the phrase "Thank you for referring your patient" is a phrase that is commonly included in reports as an expression of professional courtesy, regardless of whether the referring physician is the primary care physician or another physician in the patient's circle of care. The phrase "thank you for referring your patient" in reports to Dr. G is not determinative whether a physician-patient relationship existed between Dr. Hasnain and Ms. Z.

Further and contrary to Dr. Hasnain's position, Ms. Z was not seen primarily by Dr. G at the clinic and Dr. G did not deal with all of her significant issues, including the iron deficiency. Between January 1, 2009 and January 31, 2010, Dr. G saw Ms. Z on four occasions, three of which dealt with women's health issues. On February 27, 2009, Dr. G assessed Ms. Z for a complaint of irregular periods. A pelvic ultrasound was booked. On March 27, 2009, Dr. G performed a Pap smear on Ms. Z. On April 17, 2009, Dr. G saw Ms. Z after the ultrasound report was received and referred Ms. Z to Dr. J, a gynecologist, for an assessment of an ovarian cyst. At the fourth visit on August 28, 2009, Dr. G refilled a prescription for Celexa for Ms. Z. In this same time period, Dr. Hasnain saw Ms. Z on five occasions, and on a sixth occasion in August 2009, Dr. Hasnain wrote a prescription for Ms. Z. During that same period, only one physician saw Ms. Z on more occasions than Dr. Hasnain; that physician (Dr. E) saw Ms. Z on six occasions.

In addition to Dr. G and Dr. Hasnain, the OHIP data shows that Ms. Z attended five other physicians at the clinic for various complaints. Dr. G was not the only physician to make a referral to a consultant. Dr. D ordered an ultrasound of the left breast and subsequently, referred

Ms. Z for a breast biopsy. He also ordered a chest x-ray. Dr. E also assessed Ms. Z and ordered a cervical and lumbar spine x-ray.

The Committee finds that no one physician at the clinic assumed the role of Ms. Z's primary care physician. In Ms. Z's case, the model of health care provided to her at the clinic was a "shared care model," where there were a number of physicians involved in Ms. Z's circle of care.

Taking into account the model of care provided to Ms. Z at the Tecumseh Community Care Center, the Committee concludes that a physician-patient relationship was established with more than one physician in Ms. Z's circle of care.

Brevity and Nature of September Visits

Counsel for Dr. Hasnain submitted that the three video recorded clinic visits between Dr. Hasnain and Ms. Z in September 2009 were very brief and that this supports Dr. Hasnain's position that there was no physician-patient relationship established by the September visits. The Committee does not accept this argument, as there is no reference, condition or factor in *Redhead,* or other cases, or in the amended legislation, that requires office visits to be of certain duration in order to determine that a physician-patient relationship is established.
Dr. Hasnain's counsel also submitted that the treatments Dr. Hasnain provided to Ms. Z were incidental and minor during four of the office visits, and an emergency on the fifth visit. This is dealt with below.

Case Law

In respect to the tests to apply to determine whether there was a physician-patient relationship, the parties reviewed several previous cases with the Committee, including *Leering*, *Rai*, *Redhead*, *Moore* (2013) and *Marshall*. While the Committee appreciates that prior decisions of the Discipline Committee may be of assistance, each case before it is unique and not a binding precedent and the Committee must carefully consider the specific facts of the case before it, in addition to reviewing decisions of other panels made in the context of different facts.

Dr. Hasnain's counsel referred to the case of Dr. Moore. Between approximately 2002 and 2004, Dr. Moore provided isolated and incidental medical services to her romantic partner Mr. X, including sending Mr. X for testing and administering immunization shots. Dr. Moore did not inform Mr. X's family doctor about all of the care she provided. Dr. Moore did not bill OHIP for these services or maintain a patient chart. By providing incidental medical care to Mr. X during their romantic relationship, Dr. Moore may have caused confusion for Mr. X as to whether Dr. Moore was acting in a personal or professional role, and represented a failure on Dr. Moore's part to understand and maintain appropriate professional boundaries. The romantic relationship ended in or around March 2004. Between April 24, 2005 and July 28, 2005, after the relationship ended, Dr. Moore saw Mr. X as a patient at the clinic where she was employed on four occasions, for: (a) liquid nitrogen treatment for warts; (b) minor assessments for dry skin; and (c) partial assessments for hyperactive airway and repeat of medication Tussionex originally prescribed by his family doctor. Dr. Moore acknowledged that she should not have seen Mr. X as a patient at the clinic where she worked given their prior sexual relationship and on-going personal connection. Dr. Moore also provided medical treatment to her daughter. In making a finding of disgraceful, dishonourable or unprofessional conduct, the Committee noted such boundary violations as admitted by Dr. Moore are directly addressed in the College Policy Statement #7-06 (Treating Self and Family Members) and are echoed in the Canadian Medical Association's Code of Ethics. "Guidance to physicians is clear: physicians should not treat either themselves or family members, except for a minor condition or in an emergency situation and only when another physician is not readily available."

This case can be distinguished from Dr. Hasnain's case. In the *Moore* case, Mr. X was living with Dr. Moore at her home and their romantic relationship began before any medical services were provided. The sexual relationship between Dr. Hasnain and Ms. Z began after the physician-patient relationship was established in February 2009. Mr. X had a family physician and Dr. Moore did not bill or maintain a patient chart for the services provided while Mr. X was her romantic partner. Dr. Hasnain charted and billed for the health care services provided and Ms Z did not have a designated family physician.

Similarly, Dr. Hasnain's case is also distinguished from *Rai* in that there was an existing sexual relationship between Dr. Rai and Ms. A, which began approximately eight months before any medical services were provided by Dr. Rai. In *Rai*, while the Committee did not find there was sexual abuse of a patient, there was a finding of disgraceful, dishonourable or unprofessional conduct for examining her for a Pap test in a non-emergency situation and ordering other blood work for fatigue. There was no prescription for drugs provided by Dr. Rai to Ms. A at the clinic visit. Again, the Discipline Committee in the *Rai* case found the College Policy "Treating Self and Family Members" in regard to Dr. Rai's boundary violations to be applicable.

It is important to consider the context in which the issue whether treatment is incidental, minor or emergent, are relevant.

The determination whether treatment is incidental, minor or emergent, typically came up in cases where the physician was asserting that there is no physician-patient relationship; rather, there is a spousal or pre-existing romantic or sexual relationship and incidental minor or emergent treatment was provided to the spouse or equivalent. As stated by the Court of Appeal in *Leering v. College of Chiropractors of Ontario, [2010] O.J. No. 406 (ONCA)*, at para 38:

> There is some room for interpretation and application of the particular circumstances of a case in the committee's determination of the second issue, whether the complainant was a patient of the chiropractor. As this court said in Mussani and Rosenberg, where incidental medical care or, for the purposes of this case, incidental chiropractic treatment is provided during the course of a spousal relationship, it is unlikely that the discipline committee will find that the spouse was a patient within the meaning of the Code. As the term "patient" is not defined in the Code, it is up to the discipline tribunal to apply its expertise in considering all the facts and circumstances in order to determine whether a complainant who was having a sexual relationship, including as a spouse, was also a patient of the health care professional and in that context, whether any medical care that was provided was merely "incidental" medical care.

In relation to incidental care, the Court continued at para 42:

> The term "incidental" is defined in Black's Law Dictionary as: subordinate to something of greater importance; having a minor role, and in the Oxford English Dictionary as: "1. Occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part; casual. . ." These definitions, as well as others that are similar, indicate that the medical care that is referred to as incidental is minor in nature, casual, or arising in a fortuitous conjunction with the spousal relationship. Two examples of "incidental medical care" might be where a doctor and her spouse are in an accident and the doctor provides on-the-spot emergency care to her spouse, or a chiropractor's spouse suffers a muscle spasm and the chiropractor performs a manipulation in order to provide immediate relief. It would be unreasonable for a spouse to be denied treatment in such circumstances.

At para 43, the Court of Appeal stated,

> “[a]lthough the word "incidental" is not defined in terms of the frequency of what may occur, *where medical treatment is provided on a regular basis by appointment in office, and where payment is expected, it is most unlikely that such treatment would be considered "incidental"*.” (emphasis added)

Dr. Hasnain’s counsel cited *Leering* in support of the argument that if only incidental or minor care was provided, there is no physician-patient relationship. However, unlike in Dr. Hasnain’s case, in *Leering*, the issue whether there was incidental care in the context of a pre-existing spouse-equivalent relationship between the chiropractor and individual in question. In Dr. Hasnain’s case, there was no sexual relationship between Dr. Hasnain and Ms. Z at the time of the commencement of the physician-patient relationship on February 6, 2009.

The Committee notes that in *Leering*, even though there was a pre-existing spouse-equivalent relationship, a chiropractor-patient relationship was established on the facts of that case (28 treatments billed to the patient’s insurer during a six-month period of cohabitation, consent to treatment form, etc.).

It is the Committee's view that the issue whether the treatments provided to Ms. Z by Dr. Hasnain were incidental, minor or emergency, is not relevant in terms of the policy "Treating Self and Family Members," as the policy does not apply to Dr. Hasnain on the facts in this case. On no interpretation would Ms. Z be considered a family member prior to the commencement of her doctor-patient relationship with him.

Also, the Committee concludes that the diagnosis and management of iron deficiency, which was diagnosed in February 2009, treated and followed up in September 2009, does not fall within the category of treatment of a minor condition. The College Policy, *Treating Self and Family Members*, published February 2007, that was in effect at the time states that, "Generally, a "minor condition" is a non-urgent, non-serious condition that requires only short-term, routine care and is not likely to be an indication of, or lead to, a more serious condition." It was clear to the Committee that Ms. Z's iron deficiency was a significant and chronic condition as demonstrated by the depleted iron stores noted on September 4, 2009. Iron deficiency is a significant, chronic medical condition that if left untreated, can lead to anemia and more serious conditions. In fact, Dr. Hasnain appears to have concluded in September that anemia was present; see his note dated September 4, 2009 that, "well, observed not acutely distressed and assess as well and second set of labwork ordered re alopecia and *anemia*" (emphasis added). Alopecia (hair loss) in women, first diagnosed on September 1 and followed up on September 4, is not a minor condition, as it may indicate an underlying medical condition that warrants investigation, as evidenced by Dr. Hasnain ordering a second set of blood work for it and anemia on September 4, 2009.

Also, as indicated above, the Committee finds that the September 3, 2009 visit was not emergency in nature.

Dr. Hasnain's counsel also referred to the case of *CPSO and Dr. Marshall* where the Discipline Committee determined that merely ordering laboratory tests and billing OHIP for a minor assessment was not sufficient to establish a physician-patient relationship. However, the *Marshall* case is not comparable to Dr. Hasnain's case for the following reasons. Dr. Marshal did not arrange appointments for Complainant A, never examined Complainant A in his office, did

not have a patient file for Complainant A and did not prescribe any medications to Complainant A. Dr. Hasnain assessed Ms. Z on five occasions in the professional setting of his clinic, billed for an intermediate and not a minor assessment on his first visit with Ms. Z, recorded his findings and management plan in Ms. Z's clinical record, arranged to follow-up Ms. Z in regards to tests that he ordered, and prescribed medication on two occasions to Ms. Z.

As was noted in *CPSO v. Muhammad*, a physician-patient relationship can be established when a physician provides only minor treatments to an individual on an episodic basis in a walk-in clinic**.** Dr. Muhammad saw Ms. X in a walk-in clinic on five occasions for minor, episodic illnesses. Dr. Muhammad took a history of the complaint, conducted a relevant physical examination, and a diagnosis was made. There was advice given, a treatment plan made and OHIP was billed for each visit. Notwithstanding in written closing submissions that Dr. Muhammad admitted that there was a physician-patient relationship with Ms. X, the Committee conducted its own analysis to determine if that was the case. As stated by the Discipline Committee in *Muhammad*, "[a]lthough 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 physician-patient relationship during this period of time." Furthermore, the Committee determined that "on the day in question" even offering assistance by providing cream for a minor condition, such as a cut lip, constituted part of an ongoing physician-patient relationship."

The case before this Committee is comparable to *Muhammad* in that Dr. Hasnain saw Ms. Z in his clinic on five occasions and provided episodic care. What distinguishes *Muhammad* from the case before this Committee is that Dr. Hasnain diagnosed, treated and followed-up Ms. Z for iron deficiency, which the Committee finds is a significant, chronic condition, and not a minor condition.

Conclusion – Pre-May 1, 2018 Analytical Approach

In making a determination whether there was an ongoing physician-patient relationship established between Dr. Hasnain and Ms Z, the Committee considered the following: the nature

and frequency of the health care services provided to Ms. Z by Dr. Hasnain, the context in which the services were provided, previous case law and the submissions of both parties. After careful consideration, and an analysis using the approach taken prior to the legislative amendments coming into effect, the Committee is satisfied that there is clear, cogent and convincing evidence to make a finding that Ms. Z was a patient of Dr. Hasnain during all five patient visits, i.e., that a physician-patient relationship was established on February 6, 2009 and continued until at least September 4, 2009.

II. Application of Patient Criteria Regulation

In applying the conditions in paragraph 1 of the Patient Criteria Regulation to the February 6 and 10, 2009 clinic visits, the Committee finds that Dr. Hasnain engaged in direct interactions with Ms. Z on those dates and that not just one but three conditions - i, ii and iv – are satisfied, in that Dr. Hasnain charged OHIP for his assessments, contributed to Ms. Z's health record, and at the February 10th visit, prescribed to her a drug for which a prescription is needed. As indicated, in the opinion of the Committee, condition iii regarding consent is also met for these visits, as Dr. Hasnain received implied consent from Ms. Z to the health care services provided by him.

Regarding the three clinic visits in September, the Committee finds that at least two conditions – conditions i (charged OHIP) and ii (contributed to health care record) - in paragraph 1 of the Patient Criteria Regulation are met, and in August 2009, condition iv was met, when Dr. Hasnain prescribed to Ms. Z a drug for which a prescription is needed. Condition iii regarding consent is also met for the September visits, as Dr. Hasnain received implied consent from Ms. Z to the health care services provided by him.

Therefore, based on the Patient Criteria Regulation, the Committee finds that Ms. Z was a patient of Dr. Hasnain on each of her five encounters with him and that the physician-patient relationship was established on February 6, 2009.

Subparagraph 1(6)(a) of the Code states that, "an individual who was a member's patient within one year or such longer period of time as may be prescribed from the date on which the

individual ceased to be the member's patient…." There is no evidence before the Committee of a date on which Ms. Z ceased to be Dr. Hasnain's patient.

Furthermore, the three conditions in paragraph 2 of the Patient Criteria Regulation, to determine whether Ms Z was not a patient of Dr. Hasnain, are not met. First, there was not at the time Dr. Hasnain provided health care services to Ms. Z on February 6 and 10, 2009, a sexual relationship between Dr. Hasnain and Ms. Z. Second, although there was a sexual relationship between Dr. Hasnain and Ms. Z at the time that Dr. Hasnain provided health care services to Ms. Z on September 1, 3 and 4, 2009, the Committee finds that Dr. Hasnain's continuing follow up of Ms. Z's iron deficiency on September 4 and his diagnosis and follow up of alopecia on September 1 and 4 respectively, are not health care services of a minor nature and Dr. Hasnain's care of Ms. Z on September 3 is not a heath care service in emergency circumstances. Third, the Committee finds that Dr. Hasnain did not take steps to transfer his care of Ms. Hasnain's iron deficiency to another physician at any time.

Conclusion – Application of Patient Criteria Regulation

The Committee finds that (regardless of whether the Patient Criteria Regulation is applied retrospectively or whether pre-Patient Criteria Regulation approach is taken), a physician-patient relationship existed between Ms. Z and Dr. Hasnain and that it was established on February 6, 2009 and continued until at least September 4, 2009.

b) If an ongoing physician-patient relationship was established, was there a concurrent sexual relationship?

The Committee has found that Dr. Hasnain's and Ms. Z's physician-patient relationship commenced on February 6, 2009 and continued until at least September 4, 2009.

The Agreed Statement of Facts confirms that the sexual relationship between Dr. Hasnain and Ms. Z commenced in May 2009 and extended into late December 2009 or early January 2010. Therefore, the Agreed Statement of Facts confirms that there was an ongoing sexual relationship

when Dr. Hasnain wrote a prescription for Ms. Z in August 2009 and assessed Ms. Z and provided health care services to her on the three occasions in September 2009.

The sexual interactions took place in one room, with the exception of one occasion that took place elsewhere within Dr. Hasnain's clinic. No sexual activity took place outside Dr. Hasnain's clinic.

The Committee finds that the physician-patient relationship established in February 2009 continued until at least September 4, 2009 and that the sexual relationship between Dr. Hasnain and Ms. Z, which spanned the period May 2009 until late December 2009 or January 2010, was concurrent with the physician-patient relationship.

As stated in *Leering*, once the Committee makes the factual determination that a sexual relationship between a patient and the physician was concurrent with the physician-patient relationship, no further inquiry is required and the allegation of sexual abuse of a patient is established.

Dr. Hasnain's submission that paragraph 2 of the Patient Criteria Regulation be applied retrospectively if found that the physician-patient relationship continued beyond February and if so applied Ms. Z would not be a patient and the allegation cannot stand.

1. The Patient Criteria Regulation

Dr. Hasnain's submits that paragraph 2 of the Patient Criteria Regulation should be applied retrospectively and that the "not-a-patient conditions" are applicable in Dr. Hasnain's case. Dr. Hasnain's counsel submits that the February office visits did not constitute a physician-patient relationship and the sexual relationship, which commenced in May 2009, predates the three office visits in September, and therefore the "not-a-patient conditions" in paragraph 2 of the Patient Criteria Regulation apply.

For the reasons outlined above, the Committee strongly rejects this argument. In the context of all the health care services that Dr. Hasnain provided to Ms. Z, the Committee cannot simply disregard the two February office visits as a matter of convenience and treat them as though they did not exist.

Paragraph 2 of the Patient Criteria Regulation requires that **all** of the following conditions be satisfied:

i) There is, at the time the member provides the health care services, a sexual relationship between the individual and the member.

ii) The member provided the health care service to the individual in emergency circumstances or in circumstances where the service is minor in nature.

iii) The member has taken reasonable steps to transfer the care of the individual to another member or there is no reasonable opportunity to transfer care to another member.

Dr. Hasnain's case does not satisfy all of the conditions outlined above. It does not satisfy the first condition - that there was a sexual relationship between Dr. Hasnain and Ms. Z at the time he provided health care services to her on February 6, 2009. There was no sexual relationship at this time. In addition, for the medical conditions for which Dr. Hasnain was treating Ms Z, there is no evidence that he took reasonable steps to transfer the care of Ms. Z to another physician after he made the diagnosis of iron deficiency, prior to initiating treatment for the iron deficiency or after treatment of the iron deficiency. The Committee finds that the treatment of iron deficiency and alopecia was not minor in nature, the treatment on September 3, 2009 was not emergency in nature, and Dr. Hasnain did not take any steps to transfer her care.

Therefore, the Committee concludes that this is not a case where paragraph 2 of the Patient Criteria Regulation creates an exemption for Dr. Hasnain.

2. Should the definition of "patient" in force as of May 1, 2018 and set out in s. 1(6) of the *Health Professions Procedural Code* and in O. Reg. 260/18 be applied retrospectively?

The Committee heard submissions from both parties and also received advice from its Independent Legal Counsel as to whether the Patient Criteria Regulation should be applied retrospectively.

Dr. Hasnain's counsel submits that the Regulation is a "creature" of Bill 87 (*Protecting Patient's Act, 2017*). Counsel notes that in the past, the College has argued that the implications of Bill 87 should apply retrospectively to disciplinary matters. Counsel submits that, having regard for principles of statutory interpretation and jurisprudence addressing the issue, the Regulation applies retrospectively.

Both parties agree that the presumption against retrospective application may be rebutted if the primary purpose of the legislation is public protection. On this point, both parties rely on *Brosseau v. Alberta (Securities Commission* [1989] 1 S.C.R.301

Dr. Hasnain's counsel relies on *Tran.v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para. 50, where the court states "the law permits protective legislation to operate retrospectively absent express language or necessary implication, provided that the legislation intent otherwise supports doing so."

Dr. Hasnain's counsel also notes in *Beairsto v. CPSO*, 2017 ONCPSD 43 and *Kunynetz (Re)*, 2018 ONCSPD 5 that the Discipline Committee in those cases ruled, in reference to penalty, that Bill 87, the *Protecting Patient's Act*, applied retrospectively, in that the amendments in the Act were made for the purpose of protecting the public. The Committee stated in *Kunynetz* that "Retrospective application of mandatory revocation is most clearly appropriate when the professional misconduct in question pre-dates the change in legislation on penalty and when a hearing occurs after the legislative change has been made."

The College submits that whether the Committee applies the law prior to May 1, 2018 including the non-exhaustive list of factors in *Redhead*, or the May 2018 legislative changes, Ms. Z was Dr. Hasnain's patient at the time, concurrent with a sexual relationship, and therefore sexual abuse has been established. The College submits that it is unnecessary for the Committee to consider retrospective application in the case before it because whether the Committee takes into account the law prior to May 1, 2018, or the post May1, 2018 legislative changes, Ms. Z was Dr. Hasnain's patient at a time concurrent with a sexual relationship.

The College further submits that applying the amendments to the definition of "patient" found in the Patient Criteria Regulation would ensure that the College could more readily establish sexual abuse in the present case. Furthermore, the College submits that their case is amply proven on the approach that was in place prior to May 1, 2018.

The College agrees that on a public protection analysis, it is possible to conclude that the amendments at issue in this case are retrospective in their application. However, the College submits that where amendments may capture conduct that would not have amounted to sexual abuse but rather disgraceful, dishonourable or unprofessional conduct before May 1, 2018, it may be unfair to physicians to apply the amendments retrospectively.

In regard to applying the "one year rule" retrospectively, the Committee notes that the College Policy "Maintaining Appropriate Boundaries and Preventing Sexual Abuse," which was in effect at the time of the allegation, does not state that there is a specific time period that must elapse after ending the physician-patient relationship before engaging in a sexual relationship but rather lists a number of factors to be considered. Depending on the specific situation, the policy states it may be a "short time" if a physician saw a patient on one or two occasions to provide routine care or in the case of psychotherapy it is likely inappropriate at any time to have sexual involvement. However, a "short time" is not defined in the policy and using the approach in place prior to May 1, 2018, the Committee would make a factual determination whether a physician embarked on a sexual relationship too soon after ending the physician-patient relationship. The College relies on *Kalin* where the Divisional Court reversed the College of Teacher's tribunal's decision to make a finding that Mr. Kalin sexually abused a student in 1991,

by retrospectively applying a regulation that came into effect in 1997 after the misconduct occurred.

The College submits that the Court in *Kalin* made two points. First, an individual cannot be found to have engaged in a specified act of professional misconduct based upon a definition that did not exist at the time of the misconduct and, second, the presumption against retrospective application of new provisions defining misconduct cannot be displaced by consideration of public protection, because it cannot read into the past and potentially change the status of past conduct.

The College submits that as in *Kalin*, the amended definition of "patient" in the Patient Criteria Regulation changes the status of past conduct. Physicians would not expect, prior to May 1, 2018, that merely writing a prescription or billing OHIP for one medical appointment, in the absence of other factors as stated in *Redhead*, would be necessarily sufficient to establish a physician-patient relationship. However, after May 1, 2018, based upon amendments to the Code, all physicians have been put on notice, not only what is required to establish an individual as a patient, but also what time must elapse before a physician can engage in a sexual relationship with a former patient, if at all.

The Committee is in agreement that the case before it is not one where it is necessary to rule on whether the Patient Criteria Regulation or the "one-year rule" in subsection 1(6) of the Code should be applied retrospectively. In any event, even if the Committee was to apply the new definition of "patient" in this case, it is of no assistance to Dr. Hasnain.

The Committee has found, based upon the pre-legislative amendment approach, applying the *Redhead* factors, that Ms. Z was a patient of Dr. Hasnain and that the physician-patient relationship was established on February 6, 2009. The Committee also found that the physician-patient relationship continued until at least September 4, 2009. Finally, the Committee found that the sexual relationship, which began in May 2009 and continued until December 2009 or January 2010, was concurrent with the physician-patient relationship. Furthermore, the Committee has also found that if the more exacting criteria in the new legislation and regulation are applicable,

sexual abuse is established in the circumstances as well, on the basis that there was a concurrent doctor-patient relationship and sexual relationship.

As the Court of Appeal stated in *Leering*, "The disciplinary offence of sexual abuse is defined in the Code for the purpose of these proceedings as the concurrence of a sexual relationship and a health care professional-patient relationship. There is no further inquiry once those two factual determinations have been made."

The Committee finds that there is ample evidence that is clear, cogent and convincing to make a finding that there was a concurrent sexual relationship and physician-patient relationship between Dr. Hasnain and Ms. Z. As stated in *Leering*, once concurrence of a sexual relationship and a physician-patient relationship is established, no further inquiry is necessary and a finding of sexual abuse of a patient is made out.

Issue 2 - Did Dr. Hasnain engage in conduct that would reasonably be regarded by members as dishonourable, disgraceful, or unprofessional?

The Committee finds that Dr. Hasnain has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, by engaging in a sexual relationship with his patient.

SUMMARY

The Committee finds that Dr. Hasnain committed an act of professional misconduct, in that he engaged in sexual abuse of a patient and that he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would be reasonably regarded by members as disgraceful, dishonourable or unprofessional.

IMMEDIATE INTERIM SUSPENSION

Section 51(4.2) of the Code provides:

Interim suspension of certificate

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

(a) Under clause (1) (a) and the offence is prescribed for the purposes of clause (5.2) (a) in a regulation made under clause 43 (1) (v) of the *Regulated Health Professions Act, 1991*;

(b) Under clause (1) (b) and the misconduct includes or consists of any of the conduct listed in paragraph 3 of subsection (5); or

(c) By sexually abusing a patient and the sexual abuse involves conduct listed under subparagraphs 3 i to vii of subsection (5). 2017, c. 11, Sched. 5, s. 19 (2). [emphasis added]

Subparagraphs 3 i to vii of subsection 51(5) state:

1. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following:

   i. Sexual intercourse.
   ii. Genital to genital, genital to anal, oral to genital or oral to anal contact.
   iii. Masturbation of the member by, or in the presence of, the patient.
   iv. Masturbation of the patient by the member.
   v. Encouraging the patient to masturbate in the presence of the member.
   vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.
   vii. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 19 (3).

Given the Committee's findings, the Committee makes an immediate interim order suspending Dr. Hasnain's certificate of registration, until such time as the Committee makes an order under

subsection 5 or 5.2 of the Code. The Committee requests that the Hearings Office fix a date for the penalty hearing in this matter.

Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Hasnain, 2019 ONCPSD 50

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. HAIDER HASNAIN

PANEL MEMBERS:

DR. B. LENT
MR. P. GIROUX
DR. E. STANTON
MS. E.M. MILLS
DR. J. NICHOLSON

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

MS. ELISABETH WIDNER

COUNSEL FOR DR. HASNAIN:

MS. DANIELLE ROBITAILLE
MR. ABHISHEH VAIDYANATHAN

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS. ZOHAR LEVY

PUBLICATION BAN

Hearing Date: **August 26, 2019**
Decision Date: **August 26, 2019**
Release of Reasons Date: **October 4, 2019**

PENALTY DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the "Committee") delivered its written Decision and Reasons for Decision on Finding in this matter on January 17, 2019. The Committee found that Dr. Hasnain committed an act of professional misconduct in that: he engaged in the sexual abuse of a patient and he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee heard evidence and submissions on penalty on August 26, 2019**.** At the conclusion of the hearing, the Committee released a written order setting out its order on penalty and costs, with written reasons to follow.

SUBMISSIONS ON PENALTY

Counsel for the College and counsel for Dr. Hasnain made a joint submission as to an appropriate penalty and costs order. The order proposed by the parties included that Dr. Hasnain's certificate of registration be revoked immediately and that Dr. Hasnain appear before the panel to be reprimanded. In addition, the parties proposed that Dr. Hasnain pay costs in the amount of $20,550.00 to the College, that he reimburse the College fund for therapy and counseling provided to the patient, and that he provide security for such reimbursement in the amount of $16,060.00.

RELEVANT LEGISLATION

Counsel for the College reviewed the legislation relevant to this matter.

The Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991* (the "Code") sets penalties specific to findings of sexual abuse. Section 51(5.2) of the Code requires a panel to direct the Registrar to revoke the physician's certificate of registration if the sexual abuse consisted of sexual intercourse or certain other acts as specified in

the legislation. In this case, where the panel made a finding of sexual abuse of a patient involving sexual intercourse as well as other sexual acts, the penalty of revocation is mandated by the Code.

The Code also mandates that a panel reprimand a physician for any finding of sexual abuse.

In addition, when there is a finding of sexual abuse, the panel may order, under section 85.7 of the Code, that the physician reimburse the College for funding provided to patients for therapy and counseling, and to provide security for reimbursement of the fund.

WITNESS IMPACT STATEMENT

The Committee admitted into evidence a written witness impact statement from the patient. Under section 51(6) of the Code, the panel shall, prior to making an order, consider any written statement that has been filed describing the impact of the sexual abuse on the patient.

PENALTY PRINCIPLES

The Committee's determination on penalty was based, first, on the guiding and most important principle: protection of the public. The Committee was also mindful that the penalty should (i) serve as a general deterrent to the profession and a specific deterrent to the member; (ii) express the profession's denunciation of the misconduct; (iii) be proportionate to the misconduct; (iv) uphold the integrity of the profession and maintain the public's confidence in the College's ability to regulate the profession in the public interest; and (v) to the extent possible, rehabilitate the member.

The Committee does consider aggravating and mitigating factors in determining penalty, but in this case, the parties did not make any submissions regarding aggravating or mitigating factors.

DECISION ON PENALTY

Trust is a fundamental tenet of the physician-patient relationship. Physicians are afforded trust and power by virtue of their professional knowledge and status. This creates a power imbalance in the physician-patient relationship and makes patients vulnerable if that trust is violated. Dr. Hasnain violated that trust by engaging in a sexual relationship with his patient, exploited the inherent power imbalance in the physician-patient relationship, and abused his authority as a physician.

It is a privilege, not a right, to belong to a profession whose members are part of the regulation of that profession. This privilege must not be jeopardized by actions of physicians that transgress the values of the profession and the expectation that physicians act in their patients' best interests. Dr. Hasnain failed to meet his professional obligation by demonstrating a blatant disregard for the emotional well-being of his patient when he, for his own selfish sexual gratification, engaged in a sexual relationship with her and caused her deep anguish and harm.

The patient eloquently described the long-lasting impact and suffering that resulted from Dr. Hasnain's misconduct in her witness impact statement. This statement provided the Committee with an emotionally moving account and insight into the mental anguish experienced by a patient who has been sexually abused by her physician. The patient described how Dr. Hasnain breached her trust to the point that her trust in medical professionals has been severely affected. She described how Dr. Hasnain's actions have been long lasting and have resulted in the deterioration of her relationships with her family and friends over the years. In particular, she has trust issues involving men and she described how she has withdrawn herself from any emotional or physical relationships. She has "secluded herself to the safety of her home, burdened by the fear of being hurt or taken advantage of".

Public protection and maintaining public confidence and trust in the medical profession and medical regulation is essential not only for the wellbeing of patients but also for the profession. Dr. Hasnain, by engaging in sexual abuse of a patient, betrayed his patient's trust and also betrayed the public's trust and confidence in the profession as a whole. The Committee finds Dr.

Hasnain's behavior offensive and appalling. Members of the profession must be made aware of how seriously the College, the profession and the public take such behaviour. There is no place in the medical profession for physicians such as Dr. Hasnain who sexually abused a patient. The revocation of Dr. Hasnain's certificate of registration is mandated by legislation, but it should be noted that after considering the facts of this case and the egregious nature of Dr. Hasnain's misconduct, the Committee would have ordered revocation even if it were not mandated. Revocation of Dr. Hasnain's certificate of registration will serve to protect the public and act as a specific and a general deterrent. It will also uphold the integrity of the profession and maintain the public's confidence in the ability of the College to regulate the profession in the public interest.

The patient's witness impact statement spoke to how Dr. Hasnain's actions affected her. The Committee orders that Dr. Hasnain reimburse the College fund for therapy and counselling under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College within sixty days of the order, in the amount of $16,060.00.

Through the reprimand, the Committee was able to express directly to Dr. Hasnain the Committee's denunciation of the misconduct and the abhorrence of the public and the profession of his unacceptable behavior.

Costs

The Committee has the discretion to award costs. The Committee concluded that this was an appropriate case in which to do so and ordered costs in the amount of $20,550.00.

CONCLUSION

The Committee has found Dr. Hasnain to have sexually abused his patient and to have engaged in conduct that was disgraceful, dishonourable and unprofessional. His misconduct has had a lasting impact on the patient. As stated in her witness impact statement: "The sexual abuse by

Dr. Hasnain has affected the quality of my life in so many negative ways". The Committee denounces Dr. Hasnain's misconduct in the strictest terms as ordered below.

ORDER

The Committee stated its findings in paragraph 1of its written order of August 26, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Hasnain appear before the panel to be reprimanded;

3. The Registrar revoke Dr. Hasnain's certificate of registration effective immediately;

4. Dr. Hasnain reimburse the College for funding provided to the patient under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College, within sixty (60) days of this order in the amount of $16,060.00;

5. Dr. Hasnain pay the College its costs of this proceeding in the amount of $20,550.00 within sixty (60) days from the date of this Order.

At the conclusion of the hearing, Dr. Hasnain waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.

TEXT of PUBLIC REPRIMAND

August 26, 2019

in the case of the

COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO

and

DR. HAIDER HASNAIN

Dr. Hasnain,

On behalf of the panel, I want to express our disappointment and abhorrence of your dishonourable conduct.

We heard today of the effect of your behaviour on one of your patients, and it is only too obvious how harmful it can be to patients when physicians transgress the fundamental principles of the profession.

Notwithstanding the defence counsel's comments that you showed restraint and dignity during the hearing, the panel views your behaviour with your patient as shameful and reprehensible. Defence counsel has also informed us that you were president of your local medical society and you participated in the education of medical students and other health professionals.

As an individual physician and as a member of the College taking on additional leadership and educational roles, it was your responsibility to be aware of the professional expectations to maintain public trust.

We expect that the penalty we have ordered clearly expresses the public's and the profession's disapproval of your misconduct.