

Indexed as: Carll (Re)

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

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

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. DAVID JOHN CARLL

PANEL MEMBERS:

DR. A. KENSHOLE (CHAIR)
DR. P. HORSHAM
DR. C. HILL
P. BEECHAM

Hearing Dates:

May 23 – 25, 2001
July 9 – 13, 2001
November 5 – 9, 2001
November 12 & 13, 2001

Decision/Released Date:

July 9, 2002

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

This matter was heard by a panel of the Discipline Committee of the College of Physicians and Surgeons of Ontario at Toronto, Ontario on May 23 to 25, July 9 to 13, November 5 to 9 and November 12 and 13, 2001.

PUBLICATION BAN

At the request of counsel for the College and with the consent of the defence, the Discipline Committee made an order pursuant to section 47(1) of the Health Professions Procedural Code banning the publication of the identity or any information that could disclose the identity of the witnesses called by the College (except for the expert witness).

ALLEGATIONS

The Amended Notice of Hearing contains the allegations that Dr. David John Carll committed acts of professional misconduct as follows:

1. under clause 1(1)33 of Ontario Regulation (O. Reg.) 856/93 made under the Medicine Act, 1991, S.O. 1990, in that he engaged in acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional;
2. under clause 1(1)2 of Ontario Regulation 856/93 and paragraph 29.22 of O. Reg. 548, R.R.O. 1990, in that he failed to maintain the standard of practice of the profession;
3. under subsection 1(3) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act* (RHPA), 1991, in that he sexually abused a patient;
4. under paragraph 29.30 of O. Reg. 548 in that he engaged in sexual impropriety with patients;

5. under paragraph 29.22 of O. Reg. 548 in that he failed to maintain the standard of practice of the profession;
6. under paragraph 29.33 of O. Reg. 548 in that he engaged in conduct or an act 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
7. under paragraph 27.32 of O. Reg. 448 in that he engaged in conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

PLEA

Dr. Carll pleaded not guilty to the allegations set out above.

THE EVIDENCE

The allegations against Dr. Carll fall into the following general categories:

1. Sexual harassment of nurses at a community hospital in Ontario, including touching and comments of a personal nature and vindictiveness when unwanted attention was rebuffed.
2. Sexual harassment of a sleep laboratory technician.
3. Inappropriate behaviour towards female patients, including a lack of appropriate draping and observation of the patients when unclothed.
4. Inappropriate comments made by Dr. Carll about patients and female staff members.
5. Inappropriate examination by Dr. Carll of two complainants, both of whom were nurses.

The College called seven witnesses who testified about the inappropriate behaviour of Dr. Carll towards them and one witness, a ward clerk, who testified as to her observations of the behaviour by Dr. Carll towards others.

A. Evidence of the Complainants

(i) Complainant #1:

For 11 years, complainant 1 was a registered nurse in the emergency room, later renamed the Urgent Care Department, at a community in Ontario. For four years, complainant 1 worked with Dr. Carll, who was on the on-call roster, at least once a week. Starting in 1986, Dr. Carll would make uninvited and unwanted comments about her weight, poke her in the stomach or buttocks, and grab her collar and look down her shirt. On at least two occasions, he pinned her against a wall.

Dr. Carll made comments about the physical attributes of other female members of the hospital staff and about the bodies of female patients to complainant 1. Complainant 1 also testified that Dr. Carll would sometimes come into the room while a nurse was doing an EKG on a female patient.

In cross-examination, complainant 1 agreed that the small dimension of the work area, which was used by physicians to write their notes and where lab requisitions and a telephone were located, resulted inevitably in close contact when two or three people occupied that area at the same time. However, she reiterated that Dr. Carll would find any occasion to touch her if in close proximity.

(ii) Complainant #2:

For three years, complainant 2 was a registered nurse who worked full-time in the emergency room at the hospital for three years. Initially, she would work with Dr. Carll at least once a week. She observed Dr. Carll touching other staff members, including pulling complainant 1's collar. Whenever they were together in the nursing station, he was too close for comfort and would touch her shoulder, back, or leg. She testified that some conduct like this occurred "every time I would work with him." For a period of just over one year, Dr. Carll repeatedly made

negative comments to complainant 2 about her appearance, for example, telling her that she “needed some plastic surgery”. On one occasion, in front of patients, he asked her for a date. He made inappropriate comments to her about the bodies of female patients who he had examined.

Complainant 2 testified that she did nothing to stop his behaviour for approximately one year until an event occurred when he started rubbing her stomach in front of a patient. She pushed him away. Later that day, when she had made two unsuccessful attempts to start an IV, Dr. Carll became angry and yelled at her in front of the patient. Following that episode, complainant 2 testified that she was too upset to work. Complainant 2 complained to her manager but no action was taken. Thereafter, she kept giving away her shifts to avoid having to work with Dr. Carll, notwithstanding the financial loss thereby incurred. After this incident, no further touching incidents or personal comment were experienced.

In cross-examination, complainant 2 admitted that she declined to sign a workplace harassment form when requested to do so at the time. However, she did write a letter to the College three months after the incident detailing the incident with Dr. Carll that is outlined above.

A ward clerk in the Urgent Care Department testified that complainant 2 was terrified of Dr. Carll and would arrange for another nurse to take her shift to avoid working with him.

(iii) Complainant # 3:

Complainant 3, a registered nurse, has worked in the Emergency Department at the hospital for approximately nine years. She testified that, in the beginning, Dr. Carll would do the following: “fake punch” her abdomen; on two or three occasions, pin her against a desk with his body; approximately weekly would place his hand on her shoulder or waist; on a few occasions, he would rub his hand up or down her leg, usually below the knee. Also, he would block the doorway between rooms, causing her to take an alternative route to avoid him. She observed Dr. Carll poking other staff members in the stomach. He commented about her age and “great body” in front of a patient.

The ward clerk testified that she heard Dr. Carll making inappropriate comments to and about nursing staff and she observed him push complainant 3 against a desk with his body, pinning her there for about 45 seconds.

Complainant 3 recalled approximately six to eight episodes when Dr. Carll would remain in the room when young women were undressing in preparation for a chest examination and stated that he would not offer a gown on these occasions. She stated that the nurses discussed this informally and agreed that, whenever possible, a nurse would remain in the room when female patients were being seen by Dr. Carll.

Complainant 3 did not confront Dr. Carll as she was afraid of repercussions. The final straw came approximately three years she began her employment, following a conversation she had with Dr. Carll in which she felt that he talked about his stepdaughters in an inappropriately sexual way. She contacted the nurse manager with a complaint of workplace harassment.

In cross-examination, complainant 3 stated that she had known Dr. Carll since the mid 1970's and had worked with his wife for 12 years. She described his behaviour initially as friendly but not flirtatious. After beginning to work with Dr. Carll in the emergency room, she found his behaviour to be increasingly unacceptable. She reaffirmed that notwithstanding the small dimensions of the work area in the emergency department, touching by Dr. Carll was intentional and not by chance.

Complainant 3 described an incident in which a young woman had EKG leads placed on her chest and was required to jog on the spot while unclothed from the waist up at the request of Dr. Carll while he watched. Complainant 3 identified the patient as a casual acquaintance. Dr. Carll testified that he undertook a review of all the cardiograms performed at the hospital during the stated time period, but no record matching the woman described by complainant 3 was found. Complainant 3 was adamant that the incident did occur as described even though the patient appears to have been misidentified.

(iv) Complainant #4:

Complainant 4 is a 52-year-old registered nurse who worked with Dr. Carll for two years. For a period of approximately six years prior to employment with Dr. Carll, Dr. Carll was the family physician for herself and her family. Her complaints were as follows:

- She observed complainant 2's stress in relation to Dr. Carll's behaviour towards her;
- The impact of his behaviour on the working environment was "distracting";
- Dr. Carll made inappropriate sexual comments to her about a patient;
- She described an examination by Dr. Carll during which he removed the drape she was wearing leaving her naked. This caused her discomfort.

(v) Complainant #5:

Complainant 5, a 38 year-old registered nurse, testified as to two complaints regarding Dr. Carll. On one occasion, Dr. Carll assessed her three-year-old daughter who had diarrhea. During the examination, he asked complainant 5 "is your husband big?" while palpating her arm. In the context of the examination, she interpreted his question as relating to her husband's genitals. In his testimony, Dr. Carll stated that his question related to the parent's bone structure. However, complainant 5 testified that he did not weigh or measure her daughter during the examination. Complainant 5 felt very uncomfortable during this episode.

Complainant 5 occasionally worked with Dr. Carll at the hospital when he was called to the Chronic Care ward. She testified that, on one occasion on the Chronic Care ward, Dr. Carll placed the x-ray of a patient on her chest and abdomen and traced out the course of a j-tube with his finger. She described her reaction as shocked and scared. She reported the incident to the nurse manager but made no formal complaint as she "did not wish to be blacklisted and the physicians had all the power in a small hospital".

(vi) Complainant #6:

Complainant 6, a 35 year-old registered nurse, testified about two incidents when she saw Dr. Carll as a patient.

She was examined by Dr. Carll in the Emergency Room at the hospital when she presented with diarrhea and vomiting during her second pregnancy and was reassessed by him in his office shortly after discharge. While measuring the symphysis fundus height, complainant 6 stated that Dr. Carll's open gloved hand lingered over her vaginal area for approximately three seconds. She felt tearful and uncomfortable and told her husband she would never return to Dr. Carll. This occurred in the early 1990's.

The hospital and office record of complainant 6 were perused. It was noted on the hospital Emergency Room record that she was 5 ½ months pregnant but no measurement of symphysis fundus height was documented on this or the follow-up office visit. Notwithstanding this, the Committee found complainant 6's testimony about this event to be compelling.

The second examination about which complainant 6 complained arose from a work related back injury in 1996, which caused her considerable pain. She wanted to see her own family physician but, in his absence, attended to see Dr. Carll. During the examination, while she was clothed and with her knees drawn up to her chest, Dr. Carll moved his hand slowly from her buttock to her thigh over a period of four to five seconds.

Complainant 6 also testified concerning her experience as a registered nurse working at the Hospital Emergency Department for three years. On more than one occasion, Dr. Carll touched her buttocks, breasts and thighs. She was the recipient of comments about her appearance as well as coarse comments made by Dr. Carll about patients. Also, she described an incident where Dr. Carll asked that a drape be removed from an attractive woman in her thirties while an EKG was being performed.

Complainant 6 characterized Dr. Carll as being well respected as a physician, although his personal behaviour to her made her feel dirty. She responded to his behaviour by avoidance, which in turn resulted in Dr. Carll behaving in an intimidating way and making derogatory comments about her professional ability.

(vii) Complainant #7:

Complainant 7, a sleep lab technician who was employed by Dr. Carll for approximately one year, was fired by Dr. Carll on grounds of falsification of the hours she had worked.

Her complaints against Dr. Carll included:

- offering to listen to the fetal heart when she was four months pregnant;
- repeated subtle unwanted physical contact during the course of working together;

- being the recipient of inappropriate sexual comments about patients he had seen; and
- insulting comments about her appearance following her pregnancy.

Considerable conflicting testimony was heard surrounding the events that took place between Dr. Carll and complainant 7 during a four-day visit for a Sleep Study Conference. Dr. Carll, complainant 7 and a male sleep lab technician related by marriage to Dr. Carll, attended the conference. Then three months postpartum, complainant 7 testified that she felt compelled to attend the conference for fear of losing her job. She testified that while sitting next to Dr. Carll, he rubbed her legs. On several occasions, he came to her hotel room and tickled her and attempted to pull her off a chair by her ankles.

Subsequently, complainant 7 recorded on her timesheet that she had worked five hours at the Sleep Laboratory during the time she was at the conference. This led to a review of her hours and a determination that she was consistently exaggerating her working hours. She was suspended and received a letter from Dr. Carll terminating her employment twelve days later. Having previously sent a letter claiming discrimination to the Human Rights Commission, complainant 7 sent an additional letter claiming sexual harassment.

Following her dismissal, complainant 7 and her husband, a paramedic whose district included the hospital, contacted several of the nurses who have given testimony in this case to discuss Dr. Carll's conduct.

The differing versions of events regarding the conference trip as described by complainant 7, Dr. Carll and the male lab technician (who shared Dr. Carll's hotel room), coupled with complainant 7's dishonesty on her timesheets, caused doubt as to the veracity of complainant 7's testimony. Having heard the evidence from all parties and having assessed the demeanour of complainant 7, the Committee discounted much of complainant 7's testimony and found her to be an unreliable witness.

B. Expert Evidence

Dr. Rae Lake, a family physician in practice for over 26 years, was called by the College to give expert evidence on the practice of family physicians, particularly the appropriate draping of a patient, the correct technique employed in the measurement of the symphysis fundus height in obstetrical cases and the techniques utilized in the assessment of back pain.

He testified that the physician would have to go out of his way to place a hand over the crotch while performing the symphysis fundus height measurement. He also testified that to do so was not within the standard of the profession.

With respect to the examination of complainant 6's back injury, having reviewed the hospital and Dr. Carll's office records, Dr. Lake testified that no indication for palpating the buttocks of complainant 6 was present. He testified that palpating the buttocks is never performed with the patient in the knee/chest position. Further, he testified that there is no circumstance under which the hands are required to linger over the buttock area for several seconds, as described by complainant 6.

Dr. Silverstein, an orthopaedic surgeon, was called by the defence to give expert testimony regarding appropriate clinical examinations of patients presenting with back pain. He gave a detailed account of the manoeuvres performed by an orthopaedic surgeon in an examination of a patient with back problems. He described Dr. Carll's record of his examinations of complainant 6 as complete and thorough and testified that, while there were no indications for palpating the buttocks, there was similarly no indication that it had been performed. Dr. Silverstein opined that palpating the sciatic nerve could have been appropriate although this is done with the patient standing and not in the knee-chest position.

C. Defence Evidence**(i) Evidence of Dr. Carll**

Dr. Carll was born in 1945 and obtained his M.D. in 1969. He is married and has three children from his first marriage. He has been a general practitioner in Ontario since 1971 and has held

hospital privileges at three hospitals in the vicinity since that time. In 1986, Dr. Carll was appointed Chief of Staff at the hospital where in incidents occurred.

Dr. Carll categorically denied the complaints of physical and verbal abuse by all of the nurses who testified. He testified that any physical contact that might have occurred was not volitional but the result of the close quarters in which they worked together. He described himself as “the pokee” rather than “the poker”, the inference being that he was the recipient of such touching. He denied making comments of a personal nature whether derogatory or complimentary and similarly denied discussing patients in sexual terms with members of the hospital staff. The complaint by complainant 6 of inappropriate touching on two occasions was also vehemently denied by Dr. Carll.

Concerning complainant 7, the situation was described by Dr. Carll as a complex one. Complainant 7 elected to return to work from maternity leave earlier than planned, at the same time requesting specific shifts. This disrupted the schedule of the other sleep technicians employed by Dr. Carll. Complainant 7 contacted the Human Rights Commission while reiterating her demands to Dr. Carll. Dr. Carll consulted a labour lawyer who advised Dr. Carll that complainant 7 should be regarded as a potentially troublesome employee. Three months after she returned to work, complainant 7’s employment was terminated because of falsification of hours worked. Complainant 7 then threatened Dr. Carll with legal action including a complaint of sexual impropriety. Dr. Carll learned that, together with her husband, a paramedic whose territory includes the hospital, complainant 7 contacted several of the nurses. An internal investigation was initiated at the hospital and this in turn led to notification to the CPSO of the filing of a formal workplace harassment complaint by the named nurses.

(ii) Other Defence Evidence

Numerous witnesses were called on Dr. Carll’s behalf. Their evidence fell generally within three categories as follows:

1. Senior nurses who had worked with Dr. Carll in the 1970s and 1980s. They testified as to his professional ability and denied any knowledge of inappropriate behaviour during those years.

2. Several patients also testified on his behalf, including women who had attended him for obstetrical care and who expressed no concern about his examinations of them.
3. Other witnesses spoke favourably of his behaviour or his standing in the community. For instance, the Chairman of the Board of Governors who was instrumental in Dr. Carll being appointed as Chief of Medical Staff denied any knowledge of inappropriate behaviour by Dr. Carll towards the hospital staff.

Also, a female physician testified that she had no concern about Dr. Carll's behaviour arising from the brief interval that she spent with him as a student.

Finally, the owner of a restaurant that Dr. Carll visits frequently testified. On one occasion, complainant 7 attended the restaurant in the company of Dr. Carll and a third person. Complainant 7 was then 8 months pregnant and claimed that Dr. Carll sat beside her and rested his hand on her thigh. The restaurant owner testified that he recalled seeing Dr. Carll in the company of a pregnant woman and that she sat in a chair, not on a banquette as stated by complainant 7.

DECISION

From the testimony of the nurses, a clear and consistent pattern of inappropriate verbal and physical behaviour by Dr. Carll during the late 1980s and the early 1990s emerged. With the exception of complainant 7, the Committee was impressed by the demeanour and honesty of the College witnesses and, in spite of the similarity of their complaints, was satisfied that there had been no collusion. In particular, it should be noted that not all of the nurses knew each other. With the exception of complainant 7, the Committee found the nurses giving evidence credible and accepts their evidence set out above.

The Committee found Dr. Carll to be confident and quick thinking, but often evasive and easily angered. In the face of credible testimony from the complainants, the Committee could not accept Dr. Carll's suggestion that the physical contact complained of occurred accidentally because of the small working space. The Committee found the nurses' explanations that they individually hesitated to complain to the Hospital Administrator for fear of intimidation by Dr.

Carll believable. He was a powerful personality in a position of power within the hospital and the community. By contrast, each nurse felt powerless to confront Dr. Carll and therefore continued to be subjected to his humiliating behaviour for periods ranging from one year to several years. The Committee found it unfortunate that no action was taken by the hospital administration for several years after the first complaint of workplace harassment had been made in the early 1990's.

The Committee found the testimony of the defence witnesses in many cases to be of minimal or no relevance because they could not speak to the time period at issue. Further, the fact that the nurses and patients called by the defence had not themselves experienced inappropriate behaviour by Dr. Carll did not persuade the Committee that such behaviour did not happen.

Regarding the expert evidence, the Committee prefers Dr. Lake's opinion regarding the back examination of complainant 6 as it is more relevant in this case as Dr. Carll was a family physician. Family physicians are accustomed to assessing cases of acute back pain, whereas orthopaedic surgeons may use different techniques when dealing with chronic back pain. The examination of complainant 6 was done by Dr. Carll shortly after the injury when her pain was acute. We find Dr. Lake's assessment of the standard of practice to be the appropriate one in this case. No expert evidence was called by the defence regarding the symphysis fundus height measurement. The Committee accepts the evidence of Dr. Lake on that issue.

The Committee carefully weighed the evidence concerning the physical examinations of complainant 6, whose testimony was compelling. There is no justification for cupping the hand over the vaginal area of the patient, clothed or unclothed, during measurement of the symphysis fundus height nor is there any justification for palpating the region of the buttocks with the patient in the knee-chest position.

The Committee concludes that Dr. Carll's conduct in respect of both examinations of complainant 6 fell below the standard of practice. Further, the Committee concludes that the conduct by Dr. Carll during the measurement of the symphysis fundus height meets the criteria for sexual impropriety as set out in the Ontario Regulation that was in place at the time these acts took place. The Committee was not satisfied on the evidence that the conduct of Dr. Carll in

touching the buttock and thigh during an examination for acute low back pain in these circumstances constituted sexual abuse.

Although a certain level of informality is acceptable, even desirable, among professionals who work together, the Committee was satisfied that Dr. Carll's physical and verbal behaviour far exceeded accepted limits. This behaviour caused emotional distress to many of the complainants and a disturbed workplace for all concerned. The distress that his behaviour caused even resulted in economic hardship for one complainant who chose to give up her shifts rather than to be forced to work with Dr. Carll. The Committee was satisfied that the behaviour described by the complainants (disregarding the evidence of complainant 7) would be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee noted the chronology of the events described. Under section 33(C)(D) of the *Public Hospitals Act*, a hospital must report a physician who voluntarily resigns during the course of an investigation into his or her competence, negligence or conduct. On July 21, 1994, Dr. Carll notified the CEO of the hospital of his intention to resign his active staff medical privileges effective August 15, 1994. This was one day after complaint 7 and her husband had approached some of the hospital's nursing staff about her complaints of sexual harassment by Dr. Carll. Dr. Carll denied any knowledge of an impending investigation at the time he resigned. On August 11, 1994, the Executive Director informed Dr. Carll that, as a result of his resignation, no further action was contemplated concerning the complaint of workplace harassment. On August 16, 1994, Dr. Carll reapplied to the hospital for temporary privileges. This led to the CPSO being notified of the investigation of sexual harassment that had been undertaken at the hospital.

In the Committee's view, the timing of Dr. Carll's resignation strongly suggests that Dr. Carll was aware that complaints had been made and that an investigation would take place which would then require notice to the College. The Committee concluded that this influenced the timing of his resignation and his subsequent application for temporary privileges. This conduct reinforced the Committee's conclusion regarding Dr. Carll's credibility as a witness.

In closing submissions, counsel for the College submitted that the evidence of the nurses could be used to support one another based on the similar act nature of the complaints and, accordingly,

the Committee could consider that each complaint gave some credibility to the other complaints. Counsel for the College also submitted, however, that the evidence was sufficient for a finding of guilt looking at the evidence individually without assessing the similar act nature of the complaints. Ultimately, the Committee did not need to assess the similar act nature of the complaints since it accepted the evidence of the complainants individually (with the exception of complainant 7).

At the completion of the hearing, counsel for the defence renewed a motion to dismiss the allegations in relation to complainant 2 and complainant 7 because of delay on the part of the College in proceeding. The Committee considered the potential prejudicial effect of the time that had lapsed since the initial letter of complaint was sent to the College by one of the complainants in 1991 and the hospital's subsequent notification to the College. It was the Committee's view that no prejudice had resulted because of this and that Dr. Carll was able to make full answer and defence in this case. In coming to its decision, the Committee did take note of the fact that some of the allegations stemmed from Dr. Carll's behaviour in 1994 and 1995 when he was undoubtedly aware of the ongoing investigation. Accordingly, the motion to dismiss these allegations is denied.

In its closing submissions, counsel for the College provided an overview of the allegations from the Amended Notice of Hearing and the relevant evidence in three groupings as follows:

- (i) The allegations in paragraphs 1, 6 and 7 of the Amended Notice of Hearing (disgraceful, dishonourable or unprofessional conduct) are supported by the evidence from witnesses complainant 2, complainant 1, complainant 6 and complainant 4 regarding Dr. Carll's conduct towards nurses and patients at the hospital;
- (ii) The allegations in paragraphs 2 and 5 of the Amended Notice of Hearing (failure to maintain the standard of practice of the profession) relate to the examinations of complainant 6;
- (iii) The allegation of sexual abuse (paragraph 3 of the Amended Notice of Hearing) relates to the back examination of complainant 6 and the allegation of sexual

impropriety (paragraph 4 of the Amended Notice of Hearing) relates to the examination of complainant 6 respecting the measurement of the symphysis fundus height and of complainant 4 regarding draping.

The Committee is persuaded that the College has proved its case on the allegations contained in the Amended Notice of Hearing, except for paragraph 3, on the basis of clear, cogent and compelling evidence on a balance of probabilities.

Accordingly, the Committee finds Dr. Carll guilty of professional misconduct as alleged in paragraphs 1, 6 and 7 of the Amended Notice of Hearing. The Committee finds Dr. Carll guilty of professional misconduct for failing to maintain the standard of practice of the profession as set out in paragraphs 2 and 5 of the Amended Notice of Hearing. The Committee also finds Dr. Carll guilty of sexual impropriety as set out in paragraph 4 in respect of the examination of complainant 6 in which the symphysis fundus height was measured.

The Committee finds Dr. Carll not guilty of sexual abuse of complainant 6 as alleged in paragraph 3 of the Amended Notice of Hearing as it relates to the back examination.

Indexed as: Carll (Re)

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

IN THE MATTER OF a Hearing directed by
the Complaints Committees and the Executive Committee of
The College of Physicians and Surgeons of Ontario,
pursuant to subsections 26(2) and 36(1) of the *Health Professions Procedural Code*,
being Schedule 2 to the *Regulated Health Professions Act*, 1991,
S.O. 1991, c.18, as amended

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. DAVID JOHN CARLL

PANEL MEMBERS: DR. A. KENSHOLE (CHAIR)
DR. P. HORSHAM
DR. C. HILL
P. BEECHAM

Hearing Dates: May 23 – 25, 2001
July 9 – 13, 2001
November 5 – 9, 2001
November 12 & 13, 2001
Decision/Released Date: July 9, 2002
Penalty Hearing Date: September 13, 2002
Penalty Decision/Released Date: September 13, 2002

PUBLICATION BAN

PENALTY DECISION AND REASON FOR DECISIONS

As set out in the Decision and Reasons for Decision dated July 9, 2002, the Discipline Committee found Dr. Carll guilty of a number of allegations of professional misconduct, including failing to maintain the standard of practice of the profession, sexual impropriety, and disgraceful, dishonourable and unprofessional conduct. The facts in support of those findings of guilt are contained in the Decision and Reasons for Decision dated July 9, 2002.

The Committee resumed the hearing on September 13, 2002 to receive penalty submissions from the parties. The Committee delivered its decision on penalty orally on September 13, 2002, as set out below, with written reasons to follow.

PUBLICATION BAN

The Committee continued the order made pursuant to subsection 47(1) of the Health Professions Procedural Code (the Code) which is Schedule 2 to the Regulated Health Professions Act, 1991 banning the publication of the identity or any information that could disclose the identity of the witnesses called by the College (except for the expert witness).

REASONS FOR PENALTY

Counsel for the College submitted that the appropriate penalty was 18 months suspension, 6 months of which would be suspended if Dr. Carll took a boundaries course acceptable to the Registrar. Counsel for the College also requested a costs order in the amount of \$25,000 for 10 days of hearing.

Counsel for Dr. Carll submitted that the appropriate penalty was a recorded reprimand and attendance at a boundaries course or gender sensitivity course. Defence counsel submitted that, if a suspension was ordered, only a one to three month suspension was warranted in the circumstances. Defence counsel also submitted that no costs order should be made.

In its Decision, the Committee had found that there was a clear and consistent pattern of verbal and physical abuse by Dr. Carll directed towards six nurses over the course of a decade. Such behaviour has never been acceptable and the penalty imposed must reflect the profession's abhorrence of such behaviour and its duty to protect the public, which includes a physician's co-

workers. Dr. Carll took advantage of his position of power in the hospital and community. The nurses were humiliated, terrified and, in one instance, a nurse suffered economic loss from giving up shifts as a result of Dr. Carll's actions. Further, effective patient care depends on teamwork between physicians and nurses. Behaviour such as Dr. Carll's causes disruption in the workplace, which erodes the standard of care that the public has a right to expect.

The Committee found that there were no substantiated mitigating factors in this case. Dr. Carll did not demonstrate any insight into the impact of his behaviour or express any remorse. The seriousness of his actions was aggravated by the frequency with which they occurred, in some instances, on almost every occasion that he and a nurse were working together. As well, his pattern of behaviour continued for the lengthy period of approximately ten years.

In the Committee's view, the length of time that had elapsed, from the first complaint to the College in 1994 until these proceedings, was not a mitigating factor. The Committee found that Dr. Carll's unacceptable behaviour continued after he was aware of the complaints and after he was aware that action was being taken about them.

In arriving at the decision on the appropriate penalty and costs, the Committee felt it was necessary, in the interests of specific and general deterrence, to send a clear warning to Dr. Carll and to members of the profession that behaviour such as Dr. Carll's will not be tolerated.

For all of the above reasons, the Committee believes that the following order is appropriate. The imposition of \$25,000 in costs reflects only a small part of the cost incurred by the College in pursuing this matter and the Committee considers that amount to be reasonable in this case.

ORDER

The Discipline Committee therefore ordered and directed that:

1. Dr. Carll be required to appear before the Committee to be reprimanded and that the reprimand be recorded on the register.

2. The Registrar suspend Dr. Carll's certificate of registration for twelve (12) months commencing November 1, 2002, six (6) months of which is to be suspended if Dr. Carll successfully completes the College's boundaries course.
3. Dr. Carll pay costs to the College in the amount of \$25,000.