

Indexed as: Sharma (Re)

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

IN THE MATTER OF a Hearing directed
by the Complaints Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(2) of the *Health Professional 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. ANAND SAGAR SHARMA

PANEL MEMBERS:

**P. BEECHAM (CHAIR)
H. WALKER
DR. J. DOHERTY
DR. P. CHART
DR. M. WOLFISH**

Hearing Dates: June 23-24, 2003
August 25-28, 2003
September 8-12, 2003

Decision Release Date: December 2, 2003

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on June 23 and 24, August 25 to 28 and September 8 to 12, 2003. At the conclusion of the hearing, the Committee reserved its decision.

PUBLICATION BAN

On June 24, 2003, the Committee ordered, pursuant to ss.45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, as amended, that the public be excluded from the hearing of the third party records motion and that the motion record shall not be broadcast or published.

On August 25, 2003, the Committee ordered, pursuant to ss.47(1) of the Code, that no person shall broadcast or publish the identity of the sexual complainant witnesses or any information that could disclose their identity.

ALLEGATIONS

The Amended Notice of Hearing alleged that Dr. Sharma committed an act of professional misconduct under:

1. under paragraph 27.29 of Ontario Regulation 448 (“O. Reg. 448”) and paragraph 29.30 of the Ontario Regulation 548 (“O. Reg. 548”), made under the *Health Disciplines Act*, in that he engaged in sexual impropriety with patients;
2. under paragraph 27.32 of O. Reg. 448 and paragraph 29.33 of O. Reg. 548, in that he engaged in conduct or an act relevant to the practice of medicine that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO ALLEGATIONS

Dr. Sharma denied both allegations in the Amended Notice of Hearing.

OVERVIEW OF THE ISSUES

The events leading to the allegations occurred between August 1989 and December 1991 when two complainants allege that Dr. Sharma acted improperly in the manner, conduct and sexualization of certain physical examinations. It is also alleged that Dr. Sharma gave inappropriate and offensive advice. On all critical issues, Dr. Sharma denied the events in question occurred. The issues in the case are:

1. Did Dr. Sharma engage in sexual impropriety or otherwise act in an unprofessional manner with complainant #1?

- (i) On or about November 28, 1989
 - By doing a breast examination by touching and massaging the breasts from the front and behind while complainant #1 was standing naked
 - By failing to leave the room while complainant #1 disrobed and failing to ensure that complainant #1 was properly draped
 - by running his hand lightly down her spine to her buttocks while she was naked
 - by asking complainant #1 to turn in a circle in front of him while naked
 - by grabbing or massaging his genitals while touching complainant #1 with his other hand
- (ii) On January 12, 1990, February 5, 1990 and July 23, 1990
 - by doing more breast examinations than appropriate
- (iii) On or about February 15, 1991
 - by doing a breast examination by touching and massaging the breasts in a sexual manner while she was naked
 - by running his hand lightly down her back to her buttocks until he reached her upper thigh while she was naked
 - by doing a bimanual pelvic examination in a sexual manner and rubbing his genitals with his other hand.

2. Did Dr. Sharma engage in sexual impropriety or otherwise act in an unprofessional manner with complainant #2:

- (i) On one attendance
 - by failing to ensure that complainant #2 was properly draped
 - by causing her to stand on a stool and bend over while he viewed her from behind
 - by having an erection during a manual pelvic examination
- (ii) On one attendance
 - by telling her not to “suck her boyfriend’s cock”
- (iii) On one attendance
 - by causing complainant #2 to completely disrobe and failing to provide a sheet or gown
 - by following her into the examination room and watching while she disrobed
 - by touching and manipulating complainant #2’s breasts in a sexual manner.
- (iv) On several attendances
 - by failing to provide a drape or gown

3. Did Dr. Sharma give advice to complainant #1 and complainant #2 in an inappropriate and unprofessional manner?

- (i) by advising complainant #1 to reconcile with her husband at a time when he knew or ought to have known that her husband was being investigated for sexual abuse of his children.
- (ii) by telling complainant #2 that she had a “bad heart”

OVERVIEW OF THE EVIDENCE

Complainant #1 alleges that Dr. Sharma unnecessarily examined her breasts on a number of occasions, that he used his whole hand in a massaging pattern and that, on one occasion, he

examined her breasts when she was standing, naked and from behind. Dr. Sharma denies this. Complainant #1 alleges that during a shoulder and back examination, Dr. Sharma asked her to turn in a circle while she was naked. Dr. Sharma denies this. Complainant #1 alleges that he touched her during the back examination in a sexual way. Dr. Sharma denies this. Complainant #1 alleges that Dr. Sharma touched his genitals during examinations. Dr. Sharma denies this. Complainant #1 alleges that during a pelvic examination, Dr. Sharma rubbed his crotch up and down while he thrust his fingers in her vagina causing her to become sexually aroused. Dr. Sharma denies being aroused or being aware of her arousal.

Complainant #2 alleges that, during a physical examination, Dr. Sharma asked her to step up on a stool, while naked, and bend over. Dr. Sharma denies this. Complainant #2 alleges that Dr. Sharma had an erection while he was doing a manual pelvic examination. Dr. Sharma denies this. On one occasion when she came for treatment of a mouth infection, complainant #2 alleges that Dr. Sharma told her not to “suck her boyfriend’s cock”. Dr. Sharma says that he does not use such language.

Complainant #2 alleges that Dr. Sharma carried out a number of breast examinations inappropriately when she attended for unrelated minor complaints. Dr. Sharma denies this. Complainant #2 alleges that, on one occasion when she sought advice for breast implants, he improperly examined her. Dr. Sharma denies this occurred.

It was the duty of the Committee, on the basis of the evidence before it, to determine the truth of the above allegations and whether, if true, they constituted sexual impropriety or conduct that would be reasonably considered by members as disgraceful, dishonourable or unprofessional.

Complainant #1 alleges that Dr. Sharma advised her to reconcile with her husband when he knew that the Children’s Aid Society (CAS) would take her children away if her husband returned. Dr. Sharma agrees that he attempted to mediate reconciliation, but that it was well intentioned.

Complainant #2 alleges that Dr. Sharma told her she had a bad heart and that she was going to die. Dr. Sharma denies this.

It was the duty of the Committee to determine the truth of the above allegations and, if true, whether this would be reasonably considered by members to be disgraceful, dishonorable or unprofessional conduct.

SUMMARY OF THE EVIDENCE

The Committee heard evidence from both complainants, similar fact evidence from Ms. X., and from Ms. Y. who was the niece of complainant #1. For the defence, the Committee heard from Dr. Sharma, Dr. Sharma's wife, Ms. Z. and complainant #1's husband. The Committee received in evidence a number of exhibits including medical records, transcripts of medical notes, floor plans of Dr. Sharma's offices, relevant parts of complainant #1's diary for 1991 and expert evidence reports.

Testimony of complainant #1

Complainant #1 testified that she started to see Dr. Sharma around 1988 at his Wharncliffe office for shoulder pain, headaches, pain medication, blood pressure and checkups. No nurse or attendant was present during these examinations and none was offered. She remembered a sheet on her first visit but was unsure about others.

Complainant #1 testified that she recalled a visit on about November 1989 when she had her breasts first examined. She was asked to undress and was lying or sitting on the table when Dr. Sharma came in. He told her that he was going to examine her breasts and he took down the sheet. She was lying down and the first breast exam seemed quite regular to her. He then asked her to stand up to check her shoulder. She took off the sheet to the waist but then had to remove it entirely when she was asked to put her arms straight out and move them in different directions. He told her he needed to see her whole body. He then proceeded to examine her breasts telling her it was to see if she had any muscle damage from her shoulder. He was standing in front of her and she was completely naked. When he examined her breasts, he used his whole hand in a massaging circular fashion. He squeezed her nipples and told her he had

found cancer by doing this in someone else. He then moved behind her and examined her breasts again massaging sometimes with the right hand sometimes the left. This was different than what she had from other doctors who would use their fingers in a circular motion, check under the arms and not examine from behind.

While naked, he asked her to turn in a three hundred and sixty degree circle in front of him. He put his hand on her neck and softly ran it down her spine to the buttocks and then to the top of her thigh. She was uncomfortable with her nakedness but thought he knew something else and he was her doctor. Often she saw Dr. Sharma touching his crotch but thought that was a habit "some men do that".

Complainant #1 testified that she saw Dr. Sharma on a number of occasions for shoulder pain. He would ask her to remove her shirt and bra and then to extend her arms. He would take her blood pressure and often examine her breasts. She felt uncomfortable with this and, on one occasion, she asked her niece to accompany her. That time he checked her briefly. She asked about removing her shirt but he said it was not necessary. She continued to see Dr. Sharma without her niece and thought she was making too much of it.

She recalled one appointment when Dr. Sharma called her home and asked her to come in. She did not know why he wanted a checkup. On this visit, February 15, 1991, they first sat down and talked about complainant #1 returning to her husband. At that time, she believed her husband had molested their two daughters and the CAS and the police were involved. Dr. Sharma tried to convince her to be more forgiving to keep the family together and offered to meet with them both. She told him that the CAS would remove her daughter from her home if she had anything to do with her husband. She recorded in her diary on February 15, 1991 that Dr. Sharma said, "____ [complainant #1's husband] was sick and I was making him worse." He said, "if he goes to jail he will die and do I want to live with this." Dr. Sharma then carried out a physical examination, including a breast and back examination. He then asked her to get back on the table for a pelvic examination, told her to move down on the table and then inserted his fingers in her vagina. He moved his fingers in and out and in and out and far in and around.

She did not know for how long but felt her face become flushed and felt sexual arousal. She lifted her head and asked him to stop. He did not and she pulled back. She noted that his other hand was on his crotch and was moving up and down on top of his clothing. He did not use a speculum. She was embarrassed about her own feelings. This was unlike any examination she had before. She recalled him standing but was not sure if he was sitting for the first part of the examination. She was unsure whether Dr. Sharma made or just suggested a follow up appointment. She had no memory of tests, which followed the visit and are recorded in the chart. She was trying to figure out what had just happened, if she had caused it and, embarrassed and worried, that she had done something wrong.

Complainant #1 testified she delayed complaining to the College of Physicians and Surgeons of Ontario (CPSO) until December 9, 1996 but did tell her new family doctor, Dr. A., and Dr. B., a psychiatrist, about what Dr. Sharma had done. She was consumed at the time with concerns about her children and, until 1994, still had dealings with her husband. She was not helped in writing the letter of complaint other than where and whom to write to; it was her decision. She testified that she had no knowledge of complainant #2 or Ms. X. or the nature of their complaints against Dr. Sharma.

Complainant #1 testified she kept a diary in 1991, as was suggested to her by a support group. This was at a painful period and was a form of therapy. The first reference to Dr. Sharma was on February 15, 1991 at 3:25 am, when she wrote "Doc, shit face and he touched me the wrong way too". On February 16, 1991, she wrote that he was not much of a doc, and that he was as bad as her husband. That was how she felt that day. She did indicate that sexual assault and an offer to mediate were different. She often would write on the sides or top of diary pages but never came back and wrote anything at a later date. The note of September 25, 1991 records her reference to Dr. Sharma as a pig, and she agreed that she referred to her husband also as a pig after she found out about the alleged sexual abuse of her daughters. She did not enter the specifics of the allegations against Dr. Sharma in the diary as she would only record her feelings.

On cross examination, complainant #1 acknowledged being familiar with legal proceedings and appearing before two separate judges. She was posed two hypothetical questions:

1. If the medical doctor who examined your child or children said there was no evidence of physical abuse, do you still maintain your belief that your husband was abusing your children?
2. If the Merrimount workers and CAS workers who were present during visitation of your husband and child said there were no inappropriate conversations between them, would you still maintain your belief that those inappropriate conversations occurred?

To both questions, complainant #1 responded yes and added, because my daughter told me they did happen.

In regard to the testimony given by complainant #1, the Committee found her to be a credible witness giving consistent testimony under direct and cross-examination. She was tearful and emotional at times when there was reference to abuse of her children. Her testimony had the ring of truth to it. Her memory for specific appointment dates was poor but her recall of the events at issue was good.

Testimony of Ms. Y.

Ms. Y. testified that she is the niece of complainant #1 and lived with her from 1980 to 1991. She accompanied her aunt to a visit with Dr. Sharma at her aunt's request, as her aunt did not feel things were right. This was an unusual request.

She recalled her aunt getting a phone call from Dr. Sharma's office for an appointment of some sort. When her aunt returned from that visit, she was upset, shook up and not looking good. Ms. Y. was not aware of the nature of the physical examination complaint until a later date, after she had left the home.

The Committee found her evidence was given in a straightforward manner, which was credible and helpful.

Testimony of complainant #2

Dr. Sharma was complainant #2's doctor from August 1989 to December 1991.

Complainant #2 was able to recall only one regular physical examination. There was no attendant and none was offered. She cannot recall whether there was a gown or sheet. All she could recall is sitting naked on the examination table and having nothing to cover herself with. Dr. Sharma came in and asked her to lie down and then examined her neck, heart and breasts. He then did an internal. He did not use a speculum and she did not recall him sitting on a stool at the end of the bed. During the manual pelvic examination, she noticed that he had a “hard on”. She thought this was gross, piggish or weird and recalls that he was wearing grey slacks at the time. He was not wearing a lab coat. After the pelvic examination, he asked her to step up on a little white stool (estimated size 12 to 18 inches x 8 inches and 12 to 18 inches high), bend over and then he looked up her butt. He did not touch her at that time. She felt embarrassed and uncomfortable. This was different than other examinations in that there was no stool, no “hard on” and an attendant was present.

She attended on one visit for a mouth infection but could not recall the date. Dr. Sharma gave her medication and lectured her about not “sucking her boyfriend’s cock”. He said this was why she had the infection and she should stop doing this. She was shocked by this suggestion.

She returned to Dr. Sharma for treatment of panic attacks and nerves and other minor complaints. On one occasion, he discussed breast implants with her at her request. She removed her bra and shirt. He remained in the room and then pushed her breasts up and around with his hands and said this was how they would look.

She saw him a number of times in his office, not the examination room, and he would ask her to take her bra and top off and would check her heart and sometimes give her a B12 shot. On these occasions, he would not leave the room.

On one visit, he told her she had a bad heart based on an ECG report and that she was going to die. This upset her a lot as her father had died at 39 from a heart attack. A follow up ECG done a few months later was normal.

She saw Dr. Sharma approximately twenty-four times, the last time in December 1991. Later, she started to see Dr. C. and told him about her experience with Dr. Sharma. Dr. C. encouraged her to make a complaint.

She was taken to the medical record and had no recall for more than one pelvic examination, refusing a tetanus shot, blood tests on a number of occasions, pap smears, vaginal cultures and had a poor recall for various medications that were prescribed. She was not prepared to dispute and accepted that tests indicated as ordered on the medical record occurred on those days. She admitted to being angry with Dr. Sharma at the time she wrote the letter of complaint because he had scared the hell out of her and she had a little boy to think about. She did not complain to the College until 1996 though it was in her mind. She was not assisted in the writing of her letter of complaint and has no knowledge of complainant #1 or Ms. X. or the nature of their complaints.

The Committee found complainant #2 to be composed, consistent and clear with respect to the substance of her complaint but with a very poor memory for details relating to many of her visits to Dr. Sharma.

Testimony of Ms. X.

Ms. X. testified that she was born in 1977. She saw Dr. Sharma from the age of ten or eleven to the age of eighteen. No nurse or attendant was present or offered. Dr. Sharma began examining her breasts when she was fourteen to sixteen years old. She did not know why and said she had no breast problems although her chart records mastitis. She was in his office during all of the breast examinations but one (at the King Street site). She would take off her shirt and bra and put it over the chair. She was standing and he was in front of her during these examinations. He would rub his whole hand, his palm, over her breasts and then squeeze the nipples. Her hands were up and the examination lasted three to four minutes. She estimated eight to ten breast examinations were done. Two or three times, he used a clipboard under her breasts, she assumed to see if they were even. She said he would do breast examinations when she came for B12 shots for acne or a cold. She thought this was normal or that he was looking for something.

In 1993, after her sixteenth birthday, Ms. X. testified that she had a physical in the examination room including a pelvic examination and a pap. A sheet was provided. Part of the breast examination was carried out when she was sitting on the table. Dr. Sharma then asked her to stand and raise her arms. She put down the sheet she had used when she raised her arms, leaving her naked except for her socks. He used a clipboard and he was standing in front of her. She testified that breast examinations by other doctors were different because they used fingers, felt around and she would be sitting. During the above visit, a manual pelvic examination was performed. She felt a scraping similar to what she felt with later paps but she never saw him use an instrument.

Ms. X. testified that she started wondering about the frequency of breast examinations when other doctors did not do them. She asked him about this and he told her that her mother had cysts or tumors of some sort. She believes that mastitis is having one breast bigger than the other. She left Dr. Sharma because she moved, but wanted to leave anyway because on her last visit he said she had a baby and she didn't and she wasn't comfortable.

Ms. X. testified that she is unaware of complainant #1 or complainant #2 and does not know the nature of their complaints. She had no specific recall of many of her visits and could not say how many B12 shots she had. She estimated that she had breast examinations with six B12 shots but the medical chart records show only three B12 shots. Regarding visits between October 6, 1993 to December 30, 1993, she testified that he did not weigh her, then he weighed her once as she requested it and then that he may have weighed her several times.

Ms. X. wrote in response to Dr. Sharma's reply to her complaint that he portrayed her as an alcoholic, anorexic, sex fiend. This was because he referred to her being underweight, advised her about alcohol intake and noted that she was sexually active when she was not.

The Committee found that while Ms. X. was clear about the substance of breast examinations, she had a poor recall for specific visits, her testimony contained exaggerations and there were a number of contradictions with the medical record. For this reason, the Committee placed little weight on her testimony.

Testimony of Dr. Sharma

Dr. Sharma testified he is 64-years-old, born in Uganda, and trained in Ireland and England. He was recruited to Canada in 1972 and practiced as a general surgeon and family physician in Smooth Rock Falls until 1981. He relocated to London, Ontario and worked as a salaried physician at the Shute Institute from 1981 to 1987 where his practice focused on preventive health, nutrition and research. In 1993, he started a part time general practice at the King Street office and, in 1987, he took over a practice at Wharncliffe Road. Since 1990, he has worked only at the Wharncliffe site. He sees thirty-six to forty patients per day and has a wide practice from kids to geriatrics. He is married and has three children.

Dr. Sharma described his general assessments of adult female patients. Appointments are booked in advance. Patients are asked to fast overnight and are seen early in the day. Two to three general assessments are booked per day and they last twenty to thirty minutes. An attendant escorts patients to the examination room and patients are offered a gown or a drape and asked to undress. The chart is placed in a pocket on the door and Dr. Sharma enters when told the patient is ready. With the patient sitting on a chair or the examination table with a drape, he reviews the past medical history, family history and functional inquiry. Physical examination starts with ear, nose and throat, neck, thyroid and blood pressure. The patient is then asked to lie down for examination of the heart, lungs, breasts and abdomen. He checks the extremities and does a pelvic examination.

Breasts are examined first in the lying position. He looks at the exposed breasts and then palpates in a circular pattern using the fingers. He palpates the nipple area. Then, in the sitting position with the patient's hands behind her head, the breasts are examined again and the nipple gently squeezed to see if there is any discharge. This is a technique he learned in the U.K.

Pelvic examination is carried out in two parts. First, a disposable speculum is used to expose the cervix and a pap smear is taken. A pap smear kit is used. A culture may be done if needed. He is seated at the foot of the table and the patient may or may not be in stirrups. Second, a bimanual examination is done using one or two fingers in the vagina and the left hand on the lower abdomen and at this time he is standing. Sometimes a rectal examination is done. He

asks patients to tell him if they have pain and tells them what he is doing during the examination.

He then asks the patient to get off the table for a back examination. He inspects the back and then palpates from the neck to the lumbosacral area. The cervical, thoracic and lumbar areas are then tested for a range of motion. In order to assess the lower spine motion, patients would bend at the waist with the arms hanging down. Dr. Sharma testified that a drape is always used and that patients are never nude. He may have to remove the drape a little to see the whole spine. A sheet could be wrapped around the neck, or tucked in under the armpits or the sheet could be folded in such a way that some cover was provided.

Dr. Sharma testified he always wears a lab coat, which is buttoned for hygienic reasons and to carry instruments. There is always someone else present in the office. There is a stool present in the examination rooms to assist patients getting on and off the examination table. It is eight to ten inches high and approximately twelve to sixteen inches long by fourteen inches wide. It has a black rubber top. He stated that he has never owned a white stool.

Dr. Sharma testified his charting practice is to make some notes when the patient is seen, with completion of some at noon or the end of the day. Some may not be finished until the next day, the weekend or occasionally entries may be made a few months later. As a result, with some chart entries, a different pen was used (bolded areas on the transcribed notes entered as exhibits).

Dr. Sharma admitted no independent recollection of the events at issue and that he had to rely on the chart notes. He was aware of the complaints related to the hearing in the spring of 1997 but did not seek legal counsel until 1999 as he did not believe he had done anything wrong.

Dr. Sharma was taken to the chart entries for complainant #1. He denied she was standing during breast examination. She was draped to expose only the breasts and he used his finger pads not his whole hand. He carried out his usual spine examination during which time he would be behind her. He denied touching complainant #1's thigh. He did examine her right

shoulder by looking and testing a range of motion. During the shoulder examination, he would have examined the upper part of the right breast only; the lower part of her body was covered and he did not ask her to remove the sheet completely. He denied asking her to turn in a circle, or crotch touching, though he may have reached in his pocket.

Dr. Sharma agreed he would have done shoulder examinations on December 22, 1989, January 12, 1990, and may have on February 5, 1990 at which time her top would be off but her bra on and he would have checked the upper part of the right breast. A similar examination may have been done on March 20, 1990 and July 23, 1990. He had no recall of the visit when complainant #1 came with her niece.

With respect to the general assessment of February 15, 1991, Dr. Sharma testified that complainant #1 raised the issue of marital problems. Physical examination was carried out in the usual fashion. A pap smear was done. Sometimes the speculum has to be manipulated to bring the cervix into view. Her knees and body would be draped so that she could not see him sitting at the end of the table. His left hand was on her lower abdomen during the bimanual examination and crotch rubbing did not happen. He was unaware of her arousal and was not aroused. She was not stark naked and he did not palpate her thighs. Dr. Sharma agreed that it was remotely possible that complainant #1's sheet could have fallen off.

Dr. Sharma agreed that complainant #1's husband may have asked him to assist regarding the marital trouble in February 1991. He was aware of the separation and that complainant #1's husband was accused of sexual assault. He knew that the CAS was involved and would take the children if complainant #1's husband went back. He denied coercing her or telling her if her husband dies she will be responsible. Dr. Sharma agreed that he had talked to the husband about complainant #1's complaint and the discipline case.

Dr. Sharma was taken to the chart entries for complainant #2. On her first visit of August 18, 1989, he found her underweight and nervous. He listened to her heart sounds by slipping the stethoscope down from the neck or by pulling her shirt up. A B12 shot was given in the upper arm. Her bra and top would remain on, only her sleeve would be rolled up.

She was booked for a general assessment on August 31, 1989. On that occasion, a pelvic examination was done as a pap smear report is on the chart. Physical examination was done in the usual manner. He denied examining her while she stood on the stool but may have asked her to step down from the examination table by using the stool. Dr. Sharma felt it was most unlikely he would have asked complainant #2 to bend over while she was on the stool. She was draped with a gown or sheet and was never completely naked. He agreed that it was possible that a patient might not find a gown or a sheet, but that this was the responsibility of the reception staff. He agreed that it was a remote possibility that complainant #2 was completely naked. His office staff asks patients if they wish staff to stay during the physical examination but most do not want it. Dr. Sharma felt that most likely in 1989 patients were offered an attendant but, given human error, it was possible the offer was not made.

Dr. Sharma testified he saw complainant #2 on a number of occasions for B12 shots at which time he would listen to her heart sounds for reassurance (October 2, 1989, November 28, 1989, February 15, 1990, March 29, 1990, April 30, 1990). She would be normally dressed and he would listen from the neck of her shirt or lift the shirt. He may have done a bimanual pelvic examination on December 21, 1989 and did do a pelvic examination on June 28, 1990, as he was concerned about pelvic inflammatory disease. No speculum would be used on these occasions. On September 28, 1990, he did a breast examination, as she was having tenderness, and diagnosed mastitis. This was done in the usual manner in the examination room and she was covered with a drape.

On November 16, 1990, a general assessment was done in the usual manner and some tests including an ECG were ordered. On her return visit of November 30, 1990, he told her the cardiogram showed some changes that could lead to serious damage in the future due to heavy smoking. He did not say she had a "bad heart" or that "she was going to die". As she was anxious, a further ECG was done on January 14, 1991; this was normal. He listened to her heart on pretty nearly every visit to reassure her.

She was seen several times in 1991 for anxiety, panic attacks and minor conditions. On these occasions, a cursory examination was performed where she would be normally dressed. At no time did he see her for a discussion about breast implants.

Dr. Sharma testified, at a visit on October 31, 1991, she had a mouth infection. He examined her mouth and breasts in the standard manner and did a vaginal culture. He did not tell her to “stop sucking her boyfriend’s cock”. He does not use that kind of language. He may have responded to her questions about oral sex. He agreed that he would have given general advice regarding oral sex including caution about open wounds and contact with semen.

On her last visit of December 18, 1991, he told her about the complex nature of anxiety and that he was concerned about her use of tranquilizers and what alternatives might be useful. He gave her a prescription for Diazepam. He recorded in her chart at a later time that she was angry at not getting Diazepam and that he had encouraged her to get a full time job. He denied making any chart entries after he became aware of complainant #2’s complaint to the College.

Dr. Sharma was taken to the chart of Ms. X. The first breast examination performed was on June 16, 1993 as she wanted to go on oral contraceptives and complained of breast tenderness and fatigue. This was done in the usual manner. He did not stay in the room while she undressed and she would always go to the examination room. When asked if the breast examination was done while Ms. X. was standing, Dr. Sharma responded that it was done better in the sitting position. He did not use a clipboard. Breast examinations were done again on August 3, 1993 and September 7, 1993 (general assessment). Dr. Sharma denied carrying out a breast examination while Ms. X. stood nude. He denied removing the sheet when she was standing but offered that it may have fallen. He had difficulty doing a pelvic examination with a speculum as her entroitus was small or tight and did only a bimanual examination.

Vitamin B12 shots were given according to the medical chart on November 5, 1993, November 24, 1993 and December 30, 1993 and for these she was normally dressed. On September 29, 1995, he saw her for a urinary infection and warned her about alcohol as she had fallen after drinking and had injured her head. Her last visit was February 15, 1996. A breast examination

was done in the usual manner as she was noted to have mild mastitis. He was puzzled about Ms. X.'s reference to a baby. He may have known about it if she had a baby.

The Committee found Dr. Sharma to be unnecessarily didactic in his testimony. His testimony contained inconsistencies (regarding who raised the subject of matrimonial problems with complainant #1). He was equivocal in his description of draping during back examinations and whether breast examinations were done while patients were standing (Ms. X.). He was very authoritative in his denial and self-serving in describing his manner of examinations when he had no independent recollection of the events at issue. The Committee did not find him to be a credible witness.

Testimony of Dr. Sharma's wife

Dr. Sharma's wife testified that she is his wife and, after 1983, worked as a receptionist in her husband's King Street office. She described the office layout and the contents of the examination room including a stool with a black rubber top and black or chrome legs. She testified that she takes patients to the examination room, gives them a gown and asks if they want her to stay. They seldom do. She can hear everything. When she is not available, one of two girls covers her absence and she has instructed them regarding the office procedure.

In 1987, she divided her time between the two offices. Since the complaint in 1997, there has been a sign indicating that an attendant can be present or the door left open for any kind of examination. Dr. Sharma's wife testified that Dr. Sharma always wears a lab coat and it is always buttoned and has a lot of stuff in the pockets.

When asked about the letter of complaint, she said she had no information other than what was in the papers in August and September of 2003.

The Committee found her testimony to be straightforward but of a general nature and of limited relevance as, during the time of the events at issue, she was not always present. The Committee was troubled by her claim to have no knowledge of the complaints other than what was in the

media and yet admitted to placing a sign in the office back in 1997 at the time when the complaints became known to them.

Testimony of Ms. Z.

Ms. Z. testified that she worked as a receptionist occasionally at Dr. Sharma's King Street office. She said Dr. Sharma always wore a lab coat and would wear it all day except when making house calls. When female patients came for examination, she would ask them if they wished an attendant or to have the door left open and provided them with a sheet or a gown. She could hear the conversations and, from 1995 to 2000, she never heard rude or coarse language.

The Committee did not find her testimony to be helpful to the matters it had to decide.

Testimony of complainant #1's husband

Complainant #1's husband testified with a translator present. He was previously married to complainant #1. He testified that they changed family doctors because his wife wanted to before they went to Dr. Sharma. She never complained to him about Dr. Sharma at that time. He did not tell Dr. Sharma that his wife had accused him of incest and lost the case. He admitted being convicted of criminal harassment.

The Committee did not find the testimony of this witness to be relevant or useful in the matters under consideration.

FINDINGS AND DECISION

The Committee in its deliberations was mindful that the onus of proof was on the College, that the civil standard of law applies and, namely, that there must be clear, cogent and convincing evidence to support a finding. The Committee was aware of the principles in the Bernstein decision. This case was made more difficult by the passage of time, which caused difficulty in witness' memory for specific details.

Allegation of sexual impropriety

The Committee understood that sexual impropriety is the term used in the *Health Disciplines Act* (HDA) to refer to sexual misconduct by a physician towards a patient occurring prior to December 31, 1993. Under the HDA, sexual misconduct is not explicitly defined, as “sexual abuse” now is under the *Regulated Health Professions Act, 1991* (RHPA).

I. Findings in the Case of complainant #1

The Committee accepted that complainant #1 attended Dr. Sharma as a patient from November 1989 to February 1991. The Committee accepted that on November 28, 1989, Dr. Sharma performed a general assessment of complainant #1. Complainant #1 was asked to undress completely, a sheet was provided for cover and Dr. Sharma was not in the room when complainant #1 undressed. The Committee was of the view that this aspect of the examination was normal practice.

The Committee accepted that complainant #1 was asked to stand for a part of the examination and asked to perform movements that made it impossible for her to cover herself. During the time she was standing naked, a breast exam was carried out from the front and then from behind in a massaging fashion using the whole hand. The Committee accepted the testimony of complainant #1 that this examination was unlike any breast examination she had in the past, where a doctor would examine her breasts with the fingers in a circular pattern and then examine the underarms.

Dr. Sharma had no independent recollection of the examination. He described his usual pattern of a general assessment, which includes examination of the breasts while lying down and again while sitting up and using the finger pads for palpation. He denied doing a breast examination on complainant #1 in the manner she described.

The Committee felt that while the palms or part of the palms of the hand can inadvertently touch the breast during a proper breast examination, this was not the case here. The Committee

accepted complainant #1's version of the events given her straightforward and consistent testimony. The Committee accepted her discomfort at being naked and her recognition, based on experience, of the elements of a proper breast examination. The Committee found that a breast examination performed while a patient is standing naked and from behind in a massaging way is clinically inappropriate. The Committee finds that Dr. Sharma massaged the breasts of this patient from behind and in a sexual manner. The Committee finds the allegation of sexual impropriety to be proven.

On the same visit as the above examination, both complainant #1 and Dr. Sharma agreed that a shoulder and back examination was carried out. Complainant #1 testified that he asked her to put down the sheet leaving her naked. Dr. Sharma testified that complainant #1 was not naked during the examination but would have covered herself in some fashion with the sheet provided. Complainant #1 described feeling uncomfortable and embarrassed by her nakedness. The Committee accepted the testimony of complainant #1 as it was clear that in the context of the shoulder and back examination it was impossible for her to be adequately covered given the raising of her arms and bending forward that she described.

The Committee notes that it is a physician's responsibility to ensure examinations are performed in a safe, secure and respectful manner given that the physician accepts the trust and confidence of the patient to act with utmost care and good faith. While there is no disagreement that a sheet was provided and that Dr. Sharma was not present when complainant #1 disrobed, it is clear that he failed to ensure that she was properly draped. The Committee did not hold that sexual impropriety had been proven. However, the Committee finds this conduct, in particular the lack of sensitivity to proper draping, to be unprofessional behavior.

Complainant #1 and Dr. Sharma both agreed as to the touching of her spine during the back examination. The discordant testimony related to the pressure applied (light touch versus pressure) and to the lower extent of the touching (upper thigh versus lumbosacral area). The Committee felt that palpation of the spine could be misinterpreted by the patient as light touching and the examination of the lumbosacral and sacroiliac areas could be misinterpreted as

an examination extending to the thigh. The Committee feels in this matter there is insufficient evidence to support a finding.

Evidence was given by complainant #1 that Dr. Sharma asked her to turn in a three hundred and sixty degree circle while naked. Dr. Sharma denied this. The Committee held that examination in such a manner is demeaning to the patient and is of no medical value. The Committee accepted complainant #1's version of events. This may not have been an overtly sexual act, but it caused her to be embarrassed and uncomfortable. It was unclear to the Committee whether this was sloppy and thoughtless or deliberately voyeuristic. While there was no sexual touching described and insufficient evidence to support a finding of sexual impropriety, the Committee finds this action to be unprofessional conduct.

During the visit of November 28, 1989, it was alleged that Dr. Sharma grabbed or massaged his genitals. The Committee did not find that this had occurred. The testimony of complainant #1 was an observation that he would touch his crotch but that she interpreted this action as a habit that some men have. It was not apparent that she was offended, or clear that his action was sexual in nature.

On January 12, February 5 and July 23, 1990, it is alleged that Dr. Sharma performed unnecessary breast examinations. It was the recollection of complainant #1 that she had breast exams done often when she attended for a painful right shoulder. At such times, she would be undressed to the waist and it is unclear that the breast examination extended beyond the top part of her right breast. Dr. Sharma agreed that, on the first several occasions when complainant #1 attended for a painful shoulder, she would be disrobed to the waist and that palpation of the upper part of the right breast would be included in the shoulder examination but after that she would not have been asked to remove her bra. He denied doing breast examinations on these visits. Whatever the frequency of the breast or partial breast examinations, the Committee accepted that complainant #1 was sufficiently uncomfortable that she asked her niece to accompany her to a visit and that this was an unusual request. Nonetheless the Committee feels there is insufficient evidence to support a finding.

On the visit of February 15, 1991, complainant #1 testified that she recalled a breast examination performed in the same manner as in November 1989. She was unsure if this was related to shoulder pain or a cancer check. It was done in a massaging way. To what degree she was disrobed or whether she was examined from behind on this occasion was unclear. The Committee is not satisfied that there is sufficient evidence to support a finding.

At the same visit, a spinal examination was performed using the same technique as described previously. Complainant #1 described light touching of the spine and normal pressure by Dr. Sharma. The Committee did not find there to be sufficient evidence to make a finding for the reasons cited previously.

At the same visit, a pelvic examination was carried out in a manner that caused complainant #1 to become sexually aroused and she asked him to stop. Complainant #1 testified that she moved back and raised herself on the examination table and, at that time, saw Dr. Sharma's left hand rubbing his crotch up and down. Dr. Sharma denied knowing of complainant #1's arousal and denied being aroused himself. In this matter the Committee considered the following:

1. Complainant #1's description of the sequence of events was credible as was her physical response of moving back on the table. Her embarrassment and concern that she had done something wrong had the ring of truth.

2. She described her shock and not knowing quite what went on. After leaving the office, she went and had a number of tests carried out because he had ordered them and she accepted there must be a reason.

3. The pelvic examination she had that day was unlike any she had previously experienced. She was able to describe the correct position of the left hand on the lower abdomen when a normal bimanual examination is done.

4. Upon her return home, she was observed to be upset, shook up and not looking good by her niece who at that time was unaware of the physical examination details. This is supported by the testimony of Ms. Y.

5. Complainant #1 made a diary entry, for February 15, 1991 at approximately 3:25 in the a.m. of February 16th, indicating that the doctor had touched her the wrong way. This was a significant entry as she had only recorded in her diary very personal feelings and her diary was kept as a therapy for the difficult family issues that were facing her at that time. The Committee did not agree that the failure to record specific details in the diary indicated a lack of truth of the events.

6. She was so disturbed by this visit that she decided never to see Dr. Sharma again.

7. Within the next six months, she got a new family doctor, Dr. A., whom she told about the experience and a psychiatrist, Dr. B., whom she also told of her experience with Dr. Sharma.

8. Even at the hearing, she appeared embarrassed to explain to the Committee the issue of her sexual arousal.

9. She carried what he did and said to her for many years before complaining to the College of Physicians and Surgeons of Ontario.

Given the plausibility of the sequence of events and the consistency of her testimony, the Committee accepted complainant #1's version of these events. The Committee finds the allegation of sexual impropriety to be proven.

The Committee felt that the part of a pelvic examination where a speculum is used to obtain a pap smear was performed on February 15, 1991 prior to the manual examination, and noted that a report indicating this is on the chart. However, the Committee did not feel that insertion and placing of the speculum and the performing of a smear could provoke the kind of sexual

response described by complainant #1. Complainant #1 had no recollection of a speculum being used, however, the Committee did not feel that this was relevant to the finding.

The Committee did not accept that complainant #1's hatred of her husband stemming from her belief that he had sexually assaulted their children or her doctor's efforts at reconciliation would provide a credible motive for complainant #1 to accuse her doctor of sexual impropriety. The Committee also did not accept that the fact that, because complainant #1 had sought legal recourse on other matters in the past, she would be inclined to falsely accuse her doctor. The Committee rejected that her state of mind was such that she would fabricate events, even though she willingly admits to persistence in her belief that her children were abused despite medical evidence to the contrary. She had received conflicting advice from many professionals on this subject and chose to believe what her children told her. The Committee is of the opinion that this did not detract from her credibility.

2. Findings in the Case of complainant #2

The Committee accepted that complainant #2 attended Dr. Sharma as a patient from August 1989 to December 1991. Complainant #2 recalls being totally naked waiting on the examination table for Dr. Sharma. She had no sheet or gown to cover herself and was uncomfortable and embarrassed because she was so thin. Her testimony on this point was clear and consistent. Dr. Sharma had no independent recollection of this event and said that it was the staff's job to prepare patients. He admitted under cross-examination that it was remotely possible that no cover was provided. The Committee found his attitude dispassionate and that it was his responsibility in such a situation to immediately provide her with a cover. The Committee accepted that the events occurred as described by complainant #2 and holds that this is unprofessional conduct.

At the same visit, complainant #2 alleges she was asked to step up on a stool and bend over while she was naked. Such stools were present in the examination room. She carried out this maneuver, which made her feel embarrassed and uncomfortable. Her testimony was clear and consistent. Dr. Sharma testified that it was highly unlikely that he told her to bend over while she was standing on the stool, which was normally used to assist patients on and off the

examination table. The Committee felt this was a bizarre request, which was demeaning, disrespectful, thoughtless and had no medical significance. The Committee accepted her testimony on this matter and holds that this is unprofessional conduct.

Complainant #2 alleges that Dr. Sharma had an erection during the time he was doing a manual pelvic examination. This made such an impression on her that she remembers to this day that he was wearing grey pants. She was offended at what she describes as his “hard on” and later described it as gross, piggish or weird. Dr. Sharma who stated that he always wore a lab coat denied this event. Dr. Sharma’s wife supported that it was Dr. Sharma’s routine to wear a lab coat, however, the Committee was not convinced that Dr. Sharma’s wife was present when the alleged activity occurred. While complainant #2 continued to see Dr. Sharma, she harboured resentment about this incident leading to her complaint to the College. When she found a new family doctor, she told him about her experience with Dr. Sharma. The Committee found complainant #2’s testimony to be clear and forthright and accepted her version of events. The Committee holds sexual impropriety to be proven in that Dr. Sharma proceeded with his conduct of a pelvic examination while in a state of sexual arousal.

Complainant #2 alleges that Dr. Sharma told her not to “suck her boyfriend’s cock” and that this shocked her. Dr. Sharma had no independent recollection of this matter but offered that a discussion of oral sex was appropriate given the diagnosis of a mouth infection and that it was more likely that he told her not to engage in oral sex. The Committee heard no evidence that would support inappropriate language being used in the office. On this matter, the Committee finds there is insufficient evidence to make a finding.

Complainant #2 alleges that, on one attendance, Dr. Sharma followed her to the examination room and watched while she disrobed, failed to provide her with a cover and manipulated her breasts in a sexual manner. The Committee was not convinced by the testimony before it that this had occurred. While complainant #2 testified that she discussed breast implants with Dr. Sharma, there is no annotation in the medical record of such a consultation and no referral was made. On this matter, the Committee finds there is insufficient evidence to make a finding.

Complainant #2 alleges that she saw Dr. Sharma a number of times when he would have her disrobe to the waist to listen to her heart or have a B12 shot. She would remove her shirt and bra and he would not leave the room when she disrobed. No drape was provided. Dr. Sharma testified that he would listen to her heart sounds at pretty nearly every visit for reassurance. This is supported by the medical record, which documents numerous visits when heart sounds are recorded. Dr. Sharma testified that she would not be disrobed on these occasions. While complainant #2 had a poor recollection for the specifics of many of her visits to Dr. Sharma, the Committee accepted that, with respect to the events involving inappropriate disrobing, her testimony was consistent and credible. The Committee finds that Dr. Sharma was insensitive and disrespectful as to his patient's need for privacy. The Committee holds that this conduct is unprofessional.

3. Additional Allegations of Disgraceful, Dishonorable or Unprofessional Conduct

In addition to the findings of unprofessional conduct noted above, the Committee looked at two further issues.

The Committee accepted that Dr. Sharma encouraged complainant #1 not to leave her husband and offered to mediate at a time when he was aware that the husband was being investigated for sexual abuse. This was uncontested by Dr. Sharma.

The Committee did accept that Dr. Sharma's attempt to facilitate a reconciliation was prompted by the patient's husband. The Committee accepted that Dr. Sharma, and not complainant #1, raised the issue of reconciliation. On this matter Dr. Sharma gave conflicting testimony saying that complainant #1 raised the subject of matrimonial discord and, then, her husband may have asked him to intervene. Nonetheless, it is clear that Dr. Sharma recalled complainant #1 for the visit where this subject was raised. She recorded that she could not believe that he would recommend something that might put her children in danger. Complainant #1 was particularly vulnerable at the time she was examined in February 1991 because of issues related to sexual abuse of her children and Dr. Sharma was aware of this situation.

While he may have been well motivated, his action in this matter was unprofessional. The Committee holds the allegation of unprofessional conduct to be proven.

Complainant #2 alleges that Dr. Sharma had told her she had a bad heart. There was no question that complainant #2 suffered anxiety and panic attacks which were increased after her abnormal ECG. The description of the abnormality and the interpretation or misinterpretation of what was said was unclear. Dr. Sharma testified that he told her the findings might lead to serious disease in future and told her to stop smoking. Complainant #2's interpretation of this was that she had a bad heart and was going to die. The Committee finds there is insufficient evidence to make a finding on this matter.

While the Committee is convinced that there is sufficient evidence to make a finding of sexual impropriety and unprofessional conduct for each complainant, there are factors, which relate to the totality of the evidence that the Committee wishes to record.

Bolding in the transcribed charts for all three patients who testified was made by using a different pen and entered at different times. There was no convincing evidence produced to support the accusation that these entries were made after 1996 at a time when Dr. Sharma became aware of the complaints against him to lend support to his letters of response. It was Dr. Sharma's practice to finish writing up the chart at times during the day, to take them home or finish them on the weekend. While some bolded entries may have raised the issue of providing a motive for the complaints, there were many additions that did not. While it might be inferred that Dr. Sharma acted improperly if he did make late chart entries, this did not play a role in the decision of the Committee.

All patients testified that there was no collusion. The complainants gave evidence of a pattern of care where they were naked or stripped to the waist unnecessarily for examinations. The complainants remember even at this late date of feeling uncomfortable and embarrassed. Neither of the complainants was asked if they wished an attendant present in spite of apparent office practice to the contrary. They describe frequent and/or unorthodox breast examinations. They were asked to undergo acts that had no medical purpose and that were demeaning and unprofessional. They were vulnerable for a variety of reasons (marital problems, anxiety).

They describe inappropriate behavior but were not physically harmed. They only complained to the College when further offended by judgmental and unwelcome advice. Both complainants observed sexual arousal during a manual pelvic examination.

While we found that the allegations in respect to complainant #1 and complainant #2 were proven independently and separately, on the evidence before us to the required standard of proof, common sense indicates that the above commonalities are not coincidental. However, we do not rely on the similar fact evidence in support of our findings.

The Committee holds that the evidence provided reached the level of clear, cogent and compelling and that the allegations of professional misconduct in the Amended Notice of Hearing were proven on both counts.

The Committee directs the Hearings Office to set the earliest possible date to hear evidence and submissions on penalty.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Anand Sagar Sharma, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the sexual complainant witnesses or any information that could disclose their identity of the witnesses under subsection 47(1) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also made an order pursuant to ss.45(3) of the Code and that the public be excluded from the hearing of the third party records motion and that the motion record shall not be broadcast or published.

In the penalty phase of the hearing, the Committee made a non-publication order to prohibit the publication or broadcast of the names of the patient-witnesses or any information that could disclose their identity pursuant to ss.45(2) of the Code.

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

93(1) Every person who contravenes an order made under section 45 or 47 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

Indexed As: Sharma (Re)

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

IN THE MATTER OF a Hearing directed
by the Complaints Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(2) of the *Health Professional 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. ANAND SAGAR SHARMA

PANEL MEMBERS: **P. BEECHAM (CHAIR)**
 H. WALKER
 DR. J. DOHERTY
 DR. P. CHART
 DR. M. WOLFISH

PUBLICATION BAN

Hearing Date(s): June 23 & 24, 2003
 August 25-28, 2003
 September 8-12, 2003

Penalty Hearing Date(s) January January 27 & 28, 2004

Decision Release Date: December 2, 2003

Penalty Decision Release Date: February 27, 2004

ORDER AS TO PENALTY AND COSTS AND REASONS FOR ORDER

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on June 23 and 24, August 25 to 28 and September 8 to 12, 2003. On December 2, 2003, the Committee delivered in writing its decision and reasons for decision. The Committee found that Dr. Sharma committed acts of professional misconduct:

- under paragraph 27.29 of Ontario Regulation 448 (“O. Reg. 448”) and paragraph 29.30 of the Ontario Regulation 548 (“O. Reg. 548”), made under the *Health Disciplines Act*, in that he engaged in sexual impropriety with patients;
- under paragraph 27.32 of O. Reg. 448 and paragraph 29.33 of O. Reg. 548, in that he engaged in conduct or an act relevant to the practice of medicine that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee heard evidence and submissions on penalty and costs on January 27 and 28, 2004 and reserved its decision.

PUBLICATION BAN

On June 24, 2003, the Committee ordered, pursuant to ss.45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, as amended, that the public be excluded from the hearing of the third party records motion and that the motion record shall not be broadcast or published.

On August 25, 2003, the Committee ordered, pursuant to ss.47(1) of the Code, that no person shall broadcast or publish the identity of the sexual complainant witnesses or any information that could disclose their identity.

In the penalty phase of the hearing, the Committee made a non-publication order to prohibit the publication or broadcast of the names of the patient-witnesses or any information that could disclose their identity pursuant to ss.45(2) of the Code.

EVIDENCE AND SUBMISSIONS ON PENALTY

The Committee received the following exhibits: a victim impact statement (complainant

#1); a letter from Dr. L dated January 26, 2004; a document containing thirty-eight letters of support; and, two separately submitted letters of support. The Committee heard testimony from the following character witnesses: Mr. J, Mr. K. The Committee also heard testimony from the following patient witnesses: A, B, C, D, E, F, G and H. who is the husband of patient B.

Testimony

Mr. J

Mr. J is a semi-retired hospital administrator at a major city hospital in Ontario. He knew Dr. Sharma in his capacity of administrator and found him to be thorough, dedicated and not hesitant to come forward with ideas. Outside of this, he also knows Dr. Sharma from a Hindu Cultural Centre where the Sharmas are active members and prime donors. He described Dr. Sharma as a religious, kind and compassionate man. He feels the events described in the newspaper are inconsistent with the man he has known for 10 years. The Committee found Mr. J to be a credible witness and was impressed with the sincerity and loyalty expressed.

Mr. K

Mr. K testified that he has known Dr. Sharma since 1991. He became a patient of Dr. Sharma as did other members of his family. While teaching at a School of Business, he referred a number of students to Dr. Sharma. Dr. Sharma always saw them even if they had no medical coverage. His relationship with Dr. Sharma became strained in the mid 1990's due to affairs at the temple and he stopped seeing Dr. Sharma as a patient around that time. Recently, following the newspaper articles, he called Dr. Sharma and offered spiritual counsel. He also recommended a psychiatrist to deal with services beyond what he could provide. His impression of Dr. Sharma is of a caring, loving, compassionate and decent human being who goes beyond the call of duty.

The Committee found his testimony straightforward and credible. He was sincere and concerned about Dr. Sharma.

The testimony of Mr. J and Mr. K provided the Committee with some indication of how Dr. Sharma is regarded within his community.

Patient A

Patient A is a 40-year-old receptionist who has been a patient of Dr. Sharma for about ten

years. She has total trust in Dr. Sharma and has found him to be meticulous, sensitive and thorough. He has always treated her professionally and while she has read the news reports, they do not coincide with the doctor she knows.

Patient B

Patient B is a retired school teacher who has been a patient of Dr. Sharma for twenty years. She has found Dr. Sharma to be dependable, always available, dignified and appropriate. She testified that he kept up with current new developments and that she has never sensed any inappropriate behavior.

Patient C

Patient C is a 44-year-old woman who runs a consulting business from her home. She has been a patient of Dr. Sharma for almost twenty years. She found him to be caring, thorough and detailed. She read the articles in the newspaper and does not accept the allegations against Dr. Sharma. She wrote a letter in support of Dr. Sharma to the College, which is included in the binder (exhibit 53).

Patient D

Patient D is a retired registered nurse who has been a patient of Dr. Sharma for seventeen years. She testified that Dr. Sharma was always very professional, compassionate and thorough. He was empathetic and a good listener. She feels comfortable and at ease with him. She wrote a letter to the College at the request of Dr. Sharma's wife which is included in the binder (exhibit 53).

Patient E

Patient E is a 54-year-old patient of Dr. Sharma. Dr. Sharma was instrumental in diagnosing her multiple sclerosis and she sees him twice monthly for monitoring. She is also followed for mammary gland dysplasia and she said that Dr. Sharma did her examinations no different than other doctors. She has never doubted Dr. Sharma and he has always treated her professionally. She was shocked to learn of the allegations and does not want to lose him.

Patient F

Patient F is a 49-year-old woman who works for the School Board. She has been a patient of Dr. Sharma for about thirteen years. She found Dr. Sharma to be a wonderful counselor for her emotional problems. She found him to be caring and compassionate at

all times.

Patient G

Patient G is a 66-year-old woman who recently retired from the banking system. She has been a patient of Dr. Sharma for almost twenty years. She has never had a problem with him and has found him to be caring and easy to approach with questions. She was always given a robe or sheet and he told her what he was doing and why.

Patient H

Patient H is a retired minister and the husband of Patient B. He has been a patient of Dr. Sharma since the 1980's. He has found Dr. Sharma to be capable and compassionate and a man whom he respects. He never had the least hesitation of having his wife examined. He feels the judgment is inconsistent with the Dr. Sharma he knows.

The Committee found the patient-witnesses all to be strongly supportive of Dr. Sharma. They describe a caring, compassionate and capable physician. However, none had read the detailed decision of the Discipline Committee. The information they had came from the newspaper and in some cases from the interview with defense counsel. The Committee has no doubt that Dr. Sharma has a number of devoted and loyal patients.

DECISION AND REASONS FOR PENALTY

In making a determination of penalty, the Committee recognizes the penalty should be reasonable, appropriate and just. The Committee understands that, with a finding of sexual impropriety under the *Health Disciplines Act*, a broad range of penalty is allowed from reprimand to revocation.

In reaching a decision on penalty, the Committee was mindful of the principles to be addressed. In particular, the Committee agreed with counsel that protection of the public, specific and general deterrence, maintaining the integrity of the profession and rehabilitation of the member were all important and relevant in these circumstances.

The Committee looked to the nature of the finding and determined that, while a number of the findings related to a lack of respect for the privacy and dignity of patients, there were aspects of the findings that were much more serious. In order to receive care, patients will allow physicians to conduct intimate physical examinations trusting that this

is necessary. The physician must not take advantage of this vulnerability or sexualize the examination. In this matter, improper and sexualized breast and pelvic examinations were done. This violation and exploitation needs to be strongly denounced. There must be a condemnation of this behaviour that sends a message to the profession that such conduct will not be tolerated. The lasting effect of such a breach of trust is best appreciated by the witness impact statement. Resulting shame, humiliation and loss of faith in the profession speaks to the gravity of the finding.

The Committee is cognizant of the legal cases that state that revocation should be ordered in only the most serious cases and cases involving repeat offenders. In this matter, there was no frank sexual acting out and the Committee was of the opinion that the misconduct, while serious, fell short of requiring revocation. The Committee does feel that a substantial suspension is appropriate and that terms and conditions should be imposed.

In regard to the length of the suspension and the specific terms and conditions, the Committee considered the following as mitigating circumstances:

- The findings relate to events which occurred more than a decade ago;
- Dr. Sharma has come to these proceedings with a clean record;
- Dr. Sharma is 65 years old, a seasoned physician with a large practice and many devoted patients;
- The testimony of patients along with the letters of support, many of which were unsolicited, repeatedly emphasize a caring, compassionate and empathetic manner of practice;
- Character references indicate that Dr. Sharma has a respected role in his community and has supported their needs;
- Dr. Sharma has suffered to date as a result of the reporting in the news media; and
- Letters of professional colleagues attest to Dr. Sharma's abilities as a physician.

The Committee also reviewed carefully the case law put before it by counsel. While there are no identical cases, the Committee found the following helpful in determining the length of suspension and the imposition of terms and conditions:

- *Hanna v. Council of the College of Physicians and Surgeons of Saskatchewan*, 1999 S.J. No. 334 (Sask.Q.B.)

- *Heath v. College of Physicians and Surgeons of Ontario*, 1997 O.J. No. 3394 (Div.Ct.), rev'g 1996, O.C.P.S.D. No. 15 and 1995 O.C.P.S.D. No. 37

The Committee is sensitive to the need for meaningful rehabilitation and agrees with the defence submission regarding the boundaries course and proposed follow up with a psychiatrist. The boundaries course provided by the College would address and reinforce the need for Dr. Sharma to understand appropriate interactions. In addition, the requirement to maintain contact with a psychiatrist addresses the need for Dr. Sharma to understand and receive help for his problem so that he may function well when he returns to practice.

The Committee also agrees with the defence submission that there be a monitoring by a health professional of all examinations of female patients in the future. The Committee agreed that this would address the issue of protection of the public and remove the concern regarding patient safety. A sign to this effect should be placed in the office.

Summary

The Committee concludes, after hearing the arguments of both parties, reviewing the case law provided, and considering the nature of the findings and the mitigating circumstances, that the appropriate penalty is a six-month suspension, on top of which there shall be imposed terms, conditions and limitations of registration to include:

- successful completion of the College Boundaries course;
- monitoring of all examinations of female patients by a registered health professional with a reporting relationship to the College and notification of this requirement by a sign in the office; and
- ongoing care with a psychiatrist approved by the College until deemed unnecessary. The psychiatrist, which may include Dr. L, should be acceptable to the College and be fully informed as to the Decision and Reasons for Decision of the Discipline Committee in this matter.

Given the nature and gravity of the findings, the Committee was also of the opinion that this is an appropriate case in which costs to the College should be paid in part by Dr. Sharma rather than be borne in full by the membership as a whole. The costs submissions made by counsel were considered. Taking into account the fact that Dr. Sharma will not be earning any income during his suspension and that he will incur

added costs of paying a health professional in his future practice, the Committee has determined that costs of \$7,500.00 should be paid to the College by Dr. Sharma within twelve months of his resumption of practice.

ORDER

Therefore, the Discipline Committee orders and directs that:

1. The Registrar suspend Dr. Sharma's certificate of registration for a period of six months, to commence on a date to be fixed by the Registrar.
2. The following terms, conditions and limitations are to be imposed on Dr. Sharma's certificate of registration:
 - (a) Dr. Sharma is to attend and successfully complete a suitable course on Boundaries approved by the Registrar before he resumes practice, with proof of successful completion of the course to be provided to the Registrar. The costs of the course are to be paid by Dr. Sharma
 - (b) Dr. Sharma will have a female member of a regulated health profession to be in attendance during all examinations of female patients. That health professional must enter into a monitoring agreement with the College which will include the requirement to report to the College any concerns about Dr. Sharma's behaviour. The costs of the health professional and reporting are to be borne by Dr. Sharma
 - (c) Dr. Sharma will post a sign in his waiting room, in a form and with a content acceptable to the College, to state that there will be a third person present for examination of female patients.
 - (d) Dr. Sharma is to continue counselling and treatment with a psychiatrist acceptable to the College, which may include Dr. L, for as long as is deemed necessary by the psychiatrist and that the psychiatrist enter into a written reporting agreement acceptable to the College, which will impose

the requirement to report to the College any concerns about Dr. Sharma's behaviour. Dr. Sharma is to pay the costs of such reporting.

3. Dr. Sharma is to pay costs of these proceedings fixed in the sum of \$7,500.00, said amount to be paid to the College within 12 months of his return to practice.