

**Indexed as: Nadel (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(1) 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. MENDEL ROBERT NADEL**

**PANEL MEMBERS:**

DR. R. GUSCOTT (CHAIR)  
DR. P. CHART  
DR. W. KING  
J. ASHMAN  
B. MOSELEY-WILLIAMS

**PUBLICATION BAN**

Hearing Date: June 16 & 17, 2003  
October 22 & 24, 2003

Decision/ Released Date: October 24, 2003

## **DECISION AND REASON FOR DECISIONS**

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on June 16 and 17 and October 22 to 24, 2003. At the conclusion of the hearing, the Committee made the following decision with written reasons to follow.

The Committee found that Dr. Nadel had committed an act of professional misconduct with respect to the complaint that he abruptly terminated or interrupted his professional relationship with his patient, complainant #1, on October 21, 1998. The Committee found that the other allegations of professional misconduct and, the allegation of incompetence, were not proven.

### **PUBLICATION BAN**

At the request of counsel for the College, the Committee made an order pursuant to subsection 45(3) 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 Dr. Nadel's patients for the protection of the patients.

### **ALLEGATIONS**

The Notice of Hearing alleged that:

1. Dr. Mendel Robert Nadel committed an act of professional misconduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and that,
2. Dr. Mendel Robert Nadel's professional care of certain patients displayed a lack of knowledge, skill or judgment or disregard for the welfare of the patients of a nature or to an extent that demonstrates that Dr. Nadel is unfit to continue in practice or that his practice should be restricted, which, if true, is incompetence under subsection 52(1) of the Code.

## **RESPONSE TO THE ALLEGATIONS**

Dr. Nadel denied both of the allegations in the Notice of Hearing. Counsel for the College indicated that he would not call evidence with respect to paragraph (5) in Appendix 1 of the Notice of Hearing and to consider it withdrawn. An amended Appendix 1 was filed as Exhibit 1(a).

## **EVIDENCE**

### **(a) Overview of the Issues**

The allegations with respect professional misconduct and incompetence arise from the conduct of Dr. Nadel in relation to four patients occurring between October 21, 1998 and August 3, 2000.

This case raises the following issues:

1. Did Dr. Nadel commit an act of professional misconduct by conducting himself in a disgraceful, dishonourable or unprofessional manner when:
  - on October 21, 1998, he was the responsible physician for complainant #1, he left the delivery room when the birth was imminent and then conditioned his return on an apology from complainant #1's husband
  - on April 19, 1999, he explained to complainant #2 that death or dialysis would be the consequence of not having her condition treated
  - on April 19, 1999, he grabbed complainant #2 on the buttock upon her departure from his examination room
  - on August 3, 1999, he demonstrated insensitivity to complainant #3 when she was attending for a missed abortion by saying "You wanted a healthy baby didn't you".
  - on August 3, 1999, he failed to clearly explain the treatment options to complainant #3 and the reasons he recommended a dilation and curettage.
  - on August 3, 2000, he failed to respect the privacy of complainant #4 by not providing her with a gown
  - on August 3, 2000, he did an inappropriate breast examination on complainant #4 by failing to inform her before doing a breast examination and then examining her while she was wearing a dress and brassiere.
2. Does the pattern of conduct exhibited by Dr. Nadel in his interaction with complainant #1, complainant #2, complainant #3 and complainant #4 demonstrate a lack of judgement, skill and a

disregard for the welfare of his patients to the extent that he is unfit to practice or that his practice should be restricted.

Complainant #1 and her husband allege that, when Dr. Nadel attended complainant #1 on October 21, 1998 at the birth of their first child, he gave instructions to use a vacuum extractor and, when asked why, he made an inappropriate remark and, subsequently, left the delivery suite. The nurse informed complainant #1's husband that Dr. Nadel would return if an apology was made.

Complainant #1's husband apologized, Dr. Nadel returned and the birth was uneventful. Dr. Nadel does not dispute making an inappropriate response to the question posed by the patient's husband, leaving the delivery suite or requesting an apology, but he felt the situation had become tense and that leaving was a way to deal with it.

Complainant #2 alleges that Dr. Nadel told her in the presence of her mother, when she attended on April 19, 1999 for chronic urinary tract infections, that, if she did not find a solution to her problem, the result would be death or dialysis by the age of 40. Dr. Nadel denies making such a comment.

Complainant #2 alleges at the same visit that Dr. Nadel grabbed her buttock when she left the examination room. Dr. Nadel denies this occurred.

Complainant #3 alleges that, when she was referred to Dr. Nadel on August 3, 1999 for a missed abortion, he admonished her saying "Don't cry, you wanted a healthy baby didn't you". Dr. Nadel does not dispute that he could have said something like that but the intention was to console her and settle her down.

Complainant #3 alleges that Dr. Nadel did not explain clearly to her what her options for management were and the reasons she undergo a dilation and curettage. Dr. Nadel feels he explained the options and his advice, but perhaps not clearly enough.

Complainant #4 alleges that Dr. Nadel did not provide her with a gown when she attended for a consultation on October 3, 2000. Dr. Nadel does not dispute this.

Complainant #4 alleges that Dr. Nadel did not inform her that he was going to do a breast examination and he performed the breast examination through her clothes and then under her brassiere. Dr. Nadel does not deny this occurred.

It was the duty of the Committee to determine the truth of the above and whether the conduct in the circumstances would be considered professional misconduct.

It was also the duty of the Committee to determine whether the conduct was of a degree to warrant the finding of incompetence based on a lack of knowledge, skill or judgement or disregard for the welfare of the patients.

## **(b) Summary of the Evidence**

### **Background**

Dr. Nadel is a practicing general obstetrician-gynaecologist. He was born in 1947 in Austria and came to Canada in 1949 with his parents. He attended the University of Toronto receiving a BSc with honours in 1969 and an MD in 1972. He then completed a straight internship in medicine at the then Toronto General Hospital. In November 1977, he completed a fellowship in Obstetrics and Gynaecology and, that year, he held the position of chief resident at Women's College Hospital (WCH). He subsequently went into practice and holds privileges at the York Finch Hospital now known as the Humber River Regional Hospital (HRRH), Finch site. He has a solo practice. In 1992 to 1993, he was Chief of Obstetrics and Gynaecology. He was part of an on call group until 1998 when he stopped and now would only be called in an emergency. He is on call all the time for his own patients and does all his own deliveries. There are seven or eight other obstetrician- gynaecologists at the Finch site.

The Committee heard the testimony of complainant #1, complainant #1's husband, complainant #2, complainant #2's mother, complainant #3, and complainant #4 on behalf of the College. The Committee also heard from Dr. Nadel and Dr. A. for the defence.

## **(c) Testimony**

**Witness # 1 - Complainant #1's husband**

Complainant #1's husband testified that he first met Dr. Nadel on October 21, 1998, when he took his wife to the hospital for the birth of their first child. His wife's regular obstetrician was out of the country at that time. Complainant #1's husband agreed with the medical record, which indicated that his wife's membranes had ruptured at 7:30 a.m. at home and that she had arrived at the hospital at 9:57 a.m. He had no recollection of Dr. Nadel's visit in the early afternoon as noted in the medical chart but does recall a later visit following which induction was ordered. He had no recollection about a discussion about induction and did not know whether Dr. Nadel had discussed this with his wife. He left the room when Dr. Nadel visited. He was not aware of antibiotics being started.

He testified that Dr. Nadel was called when the birth was imminent arriving at around 9:55 p.m. Dr. Nadel asked the nurse to prepare for a vacuum (suction) assisted delivery. Complainant #1's husband was aware of his wife's wish to have as natural a birth as possible. He asked Dr. Nadel why this was necessary. Dr. Nadel said, "he wanted to be out by 10:00." Complainant #1's husband responded that he thought his wife and child's health were more important than a social calendar. Dr. Nadel removed his gloves and said, "I'm out of here, you are on your own" and left the delivery room. The situation between he and Dr. Nadel had become tense.

Complainant #1's husband asked the nurse who was present if a doctor was necessary for delivery and she indicated that a doctor was needed for an episiotomy. He asked if another doctor might be called. In five to ten minutes, a nurse beckoned to him from the door. She indicated that, Dr. Nadel had not left the hospital and, if complainant #1's husband would apologize to Dr. Nadel, he would return. Complainant #1's husband responded that he had nothing to apologize for but would do whatever was required as his wife was in considerable distress. Upon Dr. Nadel's return, complainant #1's husband said "I appreciate your returning it was kind of you." Dr. Nadel responded, "I'm waiting." Complainant #1's husband then said, "In that case, I would like to apologize to you." Dr. Nadel then attended the birth but followed by saying that this was his hospital, his delivery room and that he was not his servant. The baby was delivered four to five minutes later at 22:22 p.m. as noted in the medical record and was healthy.

Complainant #1's husband testified that he was shocked by this behavior, which he considered overly belligerent, and that he had some concern about whether this would affect Dr. Nadel's

treatment of his wife. Complainant #1's husband agreed that Dr. Nadel had been conscientious and attentive to his wife. He had no reason to think otherwise. They were happy about the outcome except for Dr. Nadel's manner. Complainant #1's husband agreed that he did not understand that vacuum assisted delivery would hasten the birth and that was the reason he asked. He felt that Dr. Nadel wanted to get home and it was expedient.

The Committee found complainant #1's husband to be articulate, controlled and precise in his description of the events in question. His testimony was consistent both under direct and cross-examination and corresponded to the medical record.

### **Witness #2 - Complainant #1**

Complainant #1 testified she attended HRRH, Finch Site on October 21, 1998 after her membranes had ruptured for the birth of her first child. Her regular obstetrician was away and she had met Dr. Nadel a week before at his office. Dr. Nadel examined her around 10:00 to 10:30 a.m. He did not say anything to her but told the nurse she should be induced. It was complainant #1's wish to have as natural a birth as possible if there were no complications so she asked the nurse whether she could wait. The nurse said it was up to her. She was up and walking around throughout the day and does not recall Dr. Nadel's visit recorded in her chart at 13:52. Around 5:30 p.m., Dr. Nadel saw her again and said, "You have had your way all day now you should be induced." She agreed.

Dr. Nadel came to the delivery room between 9:30 to 10:00 p.m. when she was fully dilated and starting to push. He examined her, said nothing to her but asked the nurse to bring in the vacuum machine. She wondered why but had no chance to ask him or to speak with him. The nurses had said that all was going well. She was aware from her prenatal classes and her reading what a vacuum extractor was but did not know why he wanted to use it. When Dr. Nadel returned, her husband asked him a polite question as to why the vacuum extractor was required. She recalls Dr. Nadel's response being "We have to hurry this up, I have to be out of here by 10:00." She heard her husband say, "With all due respect, my wife and son's health are more important than your social calendar." Dr. Nadel tore off his gloves, threw them on the floor and said, "You are on your own now" and left the room. She felt her husband's tone of voice was still polite but agreed things had become tense. At first, she thought it was a joke. She asked the nurse if Dr. Nadel was

kidding but the nurse indicated that she did not think so. She did not know what to expect and was concerned about not having a doctor. They asked for another doctor but none arrived. A nurse summoned her husband from the room and after he returned Dr. Nadel came back. Her husband thanked him but Dr. Nadel said, "I'm waiting." Her husband then apologized. Dr. Nadel went on to say that he provided a service here and words to the effect of "my rules, my delivery room, my hospital." This all occurred over five to six minutes and the baby was born two to three minutes later. During the birth, she heard, "This thing is going to burst." She did not have an episiotomy and the vacuum extractor was not used. She had no stitches and no complications. Dr. Nadel left quickly and, the next day, stuck his head in her door asking if everything was okay. He did not examine her.

The Committee found her testimony to be straightforward and consistent under direct and cross-examination and consistent with her husband's version of events.

### **Witness #3 - Complainant #2**

Complainant #2, an advertising coordinator at the time of her visit, saw Dr. Nadel for a consultation on April 19, 1999 for a history of chronic urinary tract infections from age nine. She had seen many specialists, mostly urologists, and had one bout of pyelonephritis, which had resulted in hospitalization, she said, for one and a half weeks. At the suggestion of a trusted family friend, she came to see Dr. Nadel to see if there was anything he might offer her. Her mother accompanied her as was usual for her. Her mother remained with her except during the examination.

Complainant #2 testified that she did not recall specifics of the examination except for the pelvic exam, which was straightforward. She felt comfortable and he was friendly. He told her that she looked normal, healthy and attractive. After the examination, her mother came back to the examination room. He told them that he did not know the cause of her symptoms and that he would refer her to Dr. B. He said, "If she did not find a solution or a way of treatment, she would be dead or on dialysis by 40". This was the first time she had felt her disease might be life threatening. She stated that she had a clear recollection of these words. On leaving the office, complainant #2 followed her mother down the hall. Dr. Nadel followed her, in turn. He told her to keep in touch and grabbed her buttock. A few months later, she saw her family doctor and told her about the incident. Her doctor notified the College. She was then asked by the College to



submit a letter of complaint. Under cross-examination, she said that she took Dr. Nadel's comments about being normal, healthy and attractive as a reassuring remark and did not take it to refer to her genitals. She made no comment regarding genitals to her family doctor. She felt for the first time she had, in Dr. Nadel, a doctor who cared enough to look after her until he grabbed her buttock and that changed everything. This was not on the small of her back and it was a good firm grab.

The Committee found her testimony to be given in a firm, unequivocal and somewhat aggressive manner. While her testimony was consistent under direct and cross-examination, the Committee noted contradictions with her family doctor and with the health record regarding the duration of her admission for pyelonephritis.

#### **Witness #4 - Complainant #2's mother**

Complainant #2's mother first met Dr. Nadel on April 19, 1999 when she attended his office with her daughter. She was present in the hearing room during the testimony of her daughter.

Complainant #2's mother testified that she was with her daughter during the appointment for the history, results and discussion but left during the examination.

She testified that Dr. Nadel was unable to identify a cause of her daughter's complaint. He said "the urine sample is off the chart." She was unsure if this was a dipstix but thinks so. When asked what Dr. Nadel's exact words were, she said "If you don't find out what the problem is, \_\_\_\_\_ [complainant #2], you will be dead by 40 or on dialysis." Dr. Nadel appeared to be concerned about the test and duration of symptoms and referred her to Dr. B. This scared her as her daughter had been to many specialists, had a number of tests and one episode of pyelonephritis. No one had said complainant #2 had kidney problems and complainant #2's mother did not know whether her daughter could die of urinary tract infections.

The Committee found the evidence given by this witness to be clear and unemotional. The Committee was cognizant of the fact that she was in the hearing room during her daughter's

testimony. The Committee noted, while her testimony was internally consistent and consistent with her daughter, there was inconsistency with her daughter's medical records regarding the tests that were done.

### **Witness #5 - Complainant #3**

Complainant #3 attended Dr. Nadel's office on August 3, 1999 on referral from her family doctor for a nonviable early pregnancy. Her regular obstetrician was away and Dr. Nadel saw her on an emergency basis. Upon her arrival, she was requested to pay a \$20.00 administration fee. She explained that she was not a regular patient but paid the fee anyway.

When seen, she was upset and crying. Dr. Nadel said, "Don't cry, you wanted a healthy baby didn't you". She was taken aback and this made her more upset. After taking her history, he said, "Drop your pants and underpants and get up on the table." He did not leave the room and did not offer a drape, towel or gown. He did turn his back and continued to ask questions and phoned the hospital to make arrangements. After the examination and review of the ultrasound, he told her the uterus was too small and the baby was definitely gone. He told her the best thing to do was to have a D&C. He said, "If you were my wife, I would do you right away. You don't want to be back at 3:00 a.m. bleeding to death."

Complainant #3 was only spotting at the time and was not having cramps or heavy bleeding. She wanted to discuss this with her husband and, after doing so, the procedure was done later that day. She felt she would have waited until bleeding increased before having a D&C but they were both scared.

She subsequently complained to her obstetrician and then wrote a letter of complaint to the hospital. When she received no reply, she wrote a letter of complaint to the College. When complainant #3 read Dr. Nadel's response to the College, she felt that it added insult to injury and was patronizing and insulting. She did not feel her decision was informed.

Under cross-examination, she agreed that Dr. Nadel had not used a harsh tone but she felt it was cold. She also agreed that there could have been a cover in the office but she did not see it and none was offered and there was no towel on the bed. She is a Roman Catholic but stated she did not associate the D&C in this situation with abortion.

The Committee found her testimony to be consistent and credible. She was calm and clear.

#### **Witness #6 - Complainant #4**

Complainant #4 saw Dr. Nadel on August 3, 2003. Her family doctor referred her for a further opinion regarding cysts and fibroids, which were demonstrated on ultrasound. Her appointment was at 8:45 a.m. and, upon arrival, she was asked if she was aware of a \$20.00 administration fee. When she said no, the receptionist said she would deal with it. When she saw Dr. Nadel, she described his appearance as scruffy (unshaven and in operating room greens) and she immediately did not like the way he looked. When he called out her name, she went into the examination room and sat down. There was no introduction and the examination table had two towels on it; one was blood soiled. He took a medical history, which included a history of a left breast lesion. He then told her to undress from the waist down and left the room. No cover was offered or provided. No nurse was present. He did not portray an image of cleanliness and seemed to be disorganized.

She sat on the bed, pushing the towels away. On his return, he felt her neck glands, listened to her chest from the back through her dress, took her blood pressure and then asked her to lie down. He felt her left breast through the dress, then underneath her bra through the neckline of her dress. This made her feel very uncomfortable. It was unlike any breast examination she had before.

A pelvic examination was done. He then offered her his hand and asked her to get dressed and left the room. When he returned, he appeared quite different in that he had a relaxed confident manner. He talked about the ultrasound report and reassured her. She was satisfied with his history and pleased by the opinion but felt his manner was abrupt, his demeanor unprofessional, that she should have been told that he was going to do a breast exam, and that what was done was not a proper breast exam, "it was perverse". He should have given her a drape. She felt there was no excuse for his appearance even if he had been up all night. She admitted being put off by the \$20.00 administrative fee, which she did not like and was unaware of it. She did not see paper on the table nor did she see gowns or disposable sheets. She did not ask for a sheet or a gown. While sitting on the bed with her underclothes off, she agreed that she was covered at that

time by her dress. She did not expect a breast examination but did not object to a chest examination, the taking of blood pressure or other components of a general assessment. She did not interpret the breast examination as fondling or sexualized. She just felt very uncomfortable and remembers it vividly. There was no squeezing or nipple manipulation, just patting with the palmer aspects of the fingers with a normal amount of pressure. She had no recall of an examination of her abdomen. While agreeing that she wanted him to be thorough, she had previously had a complete examination by her family doctor. He did not ask her about a complete examination and she did not feel the breast examination was justified even with her history and it was not her expectation. She did not refuse to let him proceed.

She called the College the very same day of her visit to complain and was instructed about how to make a complaint. Complainant #4 acknowledged that Dr. Nadel subsequently apologized in a letter, but she was concerned about whether his manner of practice had changed.

The Committee found her testimony to be straightforward. At times, she was flustered and emotional especially under cross-examination when she required a break because of nausea. It appeared clear to the Committee that she still harbours an obvious dislike of Dr. Nadel.

### **Witness Dr. Nadel**

Dr. Nadel testified that he has been in practice for twenty-six years at the HRRH, Finch site and has done more than 12,000 deliveries. He also does prenatal classes on Sunday. He shares an office with three physicians and each has a secretary. His secretary does all the appointments, paper work, billing reconciliations, everything but direct patient care. His usual routine is to take the patient to the examining room, take a history, and then to say “Take your clothes off from the waist down, leave your top on and undo your bra.” He stated that, because his patient population is culturally varied, he tries to be as sensitive as possible to minimize exposure and embarrassment. If, on history, a breast complaint is noted, then a breast examination is done. He testified that a cover is always provided. Paper sheets, towels, cloth gowns are all there and kept in cubicles near the bed. He offers patients a towel, which is large enough to wrap around them if they are not obese. He agreed that it was a doctor’s responsibility to provide a safe and comfortable place and accepted that professional bodies are making this clear. He testified that he took the Society of Obstetrician and Gynecologists Conference (SOGC) Alarm course some years ago. He was unsure as to whether this included appropriate statements to make or not to make in

the case of loss or grieving. He said that each physician develops his own style. He did not feel that he distresses many women. He recognized that some may not be satisfied, not take his advice or go to other specialists.

Regarding complainant #1, Dr. Nadel testified that he was covering for Dr. C. and saw complainant #1 for one prenatal visit and then attended her labour on October 21, 1998. During that day, he was back and forth from the operating room as he had eleven cases booked. He had one other delivery that day and three the day before. When he first saw her that day, he wanted to induce as her membranes had ruptured, the presenting part was still high and the cervix was thick. They wanted to walk and he said okay. He and the nurses monitored her, he thought, more often than what was recorded on the chart which is not always 100% accurate. At 16:55 p.m., he examined her noting a temperature of 37.6°C and a lack of efficient labour and informed them that labour should be stimulated and an antibiotic started. He was sure that he did not have a long conversation with them but would have told them why and would have asked about allergies. He agreed that he did not ask her about her wishes for natural childbirth. He saw her next at 9:55 in the delivery room. Upon examining her, he could see the head and she had started pushing. Her tissues were swollen and he wanted to use the vacuum extractor for control, to shorten the labour and to protect her from tearing. He did not discuss this with the patient or her husband and recognizes he should have. He agreed that there are risks to using vacuum extractor but these occur in inexperienced hands, when used over a long period or when the baby is high up. In the case at issue, there was almost no risk and it would only be used for seconds. He admitted to making a flippant reply "that he could go home sooner" when complainant #1's husband asked why. It escalated. Dr. Nadel recalled complainant #1's husband saying, "I don't care about you, I only care about my wife and child." Dr. Nadel knew that something was wrong and that he had brought it on himself. He said, "If you think you can do this better go ahead, carry on."

He was uncomfortable and defused the tension by walking out. He intended to return. He did not tell them he would return or that the baby was fine and he did not reassure her that she was at minimal risk. He went to the nursing station and then to the doctor's lounge to ventilate. He admitted telling nurse X not to call him for this delivery. He said it was he having a tantrum and

the nurses knew him well and that it meant nothing. He estimated he was away about ten minutes. He was aware that complainant #1's husband wanted another doctor and, when Dr. D., who had been summoned from emergency came, Dr. Nadel told Dr. D. to go back to emergency saying that he would look after it. Dr. Nadel spoke with nurse X on the phone about an apology as he felt debased and devalued. He admitted that he may not have understood the needs of the patient and her husband but found the attitude and desire for another doctor hurtful. Dr. Nadel returned to the delivery room when informed that complainant #1's husband would apologize. He remained at the door after what he interpreted as a backhand apology was made until complainant #1's husband clearly apologized. Dr. Nadel recalled him saying, "I apologize now get in here and look after my wife." The baby was then delivered successfully. Dr. Nadel admitted saying, "My hospital, my rules, my delivery room." He felt a high degree of responsibility and ownership as far as the hospital was concerned. He denied making the remark, "going to burst." He does not use that terminology. He was aware that complainant #1 and her husband were still uncomfortable with what happened so, the next day, he made the visit short and advised her to see Dr. C. in six weeks.

Regarding complainant #2, Dr. Nadel did not recall whether she was accompanied. He carried out the history and physical examination in the usual manner. He left the room after asking her to change. He found no abnormality except the urethra was close to the pubic bone, however, he did not feel this was responsible for her complaints. He discussed his findings, told her she was healthy and normal and that he would try to put an end to this by referring her to Dr. B. She had no kidney problems and, therefore, was not referred to a nephrologist. There was no possibility that he said "death or dialysis" and he did not do a dipstix urinalysis. OHIP billing records submitted as evidence do not indicate that urinalysis was billed for (G010A), and the office medical chart does not indicate that a urinalysis was done.

Dr. Nadel said he would have walked behind her in leaving the examination room but did not grab her buttock. Under cross-examination, he said he may have put a hand on her shoulder or the small of her back. He felt there was no basis for what complainant #2 and her mother took away.

Regarding complainant #3, Dr. Nadel testified that he remembered her only from her testimony at this hearing. He saw her only once in his office and later the same day in the hospital for a D&C for a missed abortion. He could not remember if she was crying. He would have said something

to console her and try to settle her down. He agreed that he could have said something like “Stop crying, you wanted a healthy baby didn’t you.” However, it is more likely he said, “It happens, it is not your fault.” He feels his response to complainant #3 was appropriate. He did not say “Drop your pants and underpants,” but agreed that he may not have left the room while she undressed. There were a number of things to arrange such as an OR booking and blood work. He did the pelvic examination and made the diagnosis of missed abortion. He believes he left the room and later returned to discuss this with complainant #3.

He would have told her the fetus was nonviable but not yet passed. He recommended a D&C as soon as possible and explained that she would come back possibly bleeding heavily. He felt her options were a D&C now or later. There was a small chance that if nothing were done the products of conception would be passed completely. He may have given her two and not three options but he believed he gave her three. She may have misunderstood. Her main choices were do it or not. He explained to an extent perhaps not fully. He understood her distress but thought he was fair, courteous and professional. He did what was best for her and did not have a disrespectful attitude. While he believes he would have arranged follow up with either complainant #3 or her husband, complainant #3 returned to her regular obstetrician and Dr. Nadel felt that what she was told then confused her. He did not feel he was provocative in his reply letter to the College. It was possible but not his intention. If she was harmed, he is apologetic. He felt that complainant #3 was exceptional in that she very much attached to the fetus.

Regarding complainant #4, Dr. Nadel testified that his only recollection of her was what he heard at the hearing. He agreed she was asked for an administration fee as all patients are but the patient has the option to pay or not. His daughter was replacing his regular secretary at the time and may not have been as familiar with the routine. He agreed that he could have had a scruffy appearance as he may not have shaved and been wearing extra large baggy OR greens. He took a history noting a prior left breast lesion but, while he noted a failed breast augmentation, this information was obtained later in the visit. He asked her to take her things off and cover up and he left the room. He noted that she was wearing a long coatdress. He agreed that he may not have offered her a drape but drapes were available beside the patient. He then did a general assessment. Though he did not tell the patient that he was going to do a complete examination, he felt it implicitly understood. He would not have told her he was going to do a breast examination. He performed a

complete examination but, when he examined her breasts, he realized that it was not ideal and that he should have asked her to undress completely. He would do it differently if he had to do it again. It was at that point she told him about the failed augmentation mammoplasty. After the examination, he discussed her condition, reassured her and then wrote a letter of consultation. Upon receiving the letter of complaint, he apologized if he offended her as he had not perceived her discomfort. Under cross-examination, he denied being dismissive of complainant #4. Rather, he was distressed but in “style rather than substance”. He agreed that he may have had a scruffy appearance and would not feel he had to explain this. He agreed that he did not do the breast examination in the best possible way. He examined both breasts but he felt the breast exam was restricted because of impaired access from her dress and bra. He was wrong.

Dr. Nadel testified that he no longer sees other physicians’ obstetrical patients since these events except on an emergent basis, as he is the senior ranking obstetrician. He has taken the Boundaries Course voluntarily and is due to take the Communications Course in December. Additionally, he has rearranged his office, gowns are available, he has a second examining room, which allows him to leave and not come back until patients are changed. He tries to be respectful and make patients comfortable. Dr. Nadel indicated he may have been dramatic in describing risk of complications regarding complainant #1 in his letter to the College. His purpose in this case was to control the birth process as best he could in order to minimize the risk both short and long term for the patient.

The Committee found Dr. Nadel to be overly didactic in his testimony. He spoke quickly despite admonitions to slow down. In some instances, his testimony was shrouded by going into great detail about correct clinical management rather than giving a direct answer. His speech was pressured at times and some of his testimony was clearly self-serving.

#### **Witness Dr. E.**

Dr. E. testified that she is a general practitioner and has been complainant #2’s family doctor for the last fourteen years. She does not know Dr. Nadel and has had no dealings with him. At a visit on October 14, 1999, complainant #2 told her about her uneasiness with what happened with Dr. Nadel. There were two concerns. The first was that she had been told several times that she had healthy, clean and attractive genitalia. The second was that he had grabbed her buttocks. Dr. E. felt she was obliged to report this and called the College the next day and sent a letter to the



College dated December 18, 1999 (exhibit 14). Dr. E. heard the comment about death or dialysis first from one of the defence lawyers. Complainant #2 had not mentioned the comment at the time of her visit. Two weeks prior to the hearing when complainant #2 was in for a visit, Dr. E. asked her about the comment. Complainant #2 said yes, that it was made but that she had also heard this from other urologists in the past and she was not worried. It did not have any dramatic effect.

Dr. E. testified that she initially misunderstood how complainant #2 came to see Dr. Nadel. She believed that complainant #2 had heard about him on a radio show but in fact complainant #2 said her mother made the appointment. Dr. E. testified that she always makes her notes in the room. She did not make a note of the conversation with the defence lawyer but remembered it clearly. She also did not make note of the conversation regarding the death or dialysis comments made by complainant #2 at the time of her recent visit but understood the importance of it and remembers it well. It was also noted that complainant #2 saw Dr. E. on May 10, 1999 for a minor unrelated complaint which was dealt with quickly and, on that occasion, there was no mention of Dr. Nadel.

The Committee found the evidence given by Dr. E. to be straightforward, consistent and pertinent to the matters at issue.

## **FINDINGS AND DECISION**

The Committee understands that the burden of proof in these matters is upon the College. The standard of proof required to make a finding is a balance of probabilities on the basis of clear, cogent and convincing evidence.

### **Allegation 1**

#### **Case of complainant #1**

The issue before the Committee is whether the actions of Dr. Nadel in leaving the delivery room under the circumstances would be considered professional misconduct. There is very little dispute regarding the factual occurrence of events. The Committee accepts the following:

- Dr. Nadel attended complainant #1 during labour and delivery on October 21, 1998 and was the responsible physician.

- There was a lack of communication between Dr. Nadel and his patient and her husband in a number of areas including progress of the labour, her desire for natural childbirth, the need for induction or stimulation, the need for vacuum extraction, the risks associated with and without vacuum assisted delivery.
- Dr. Nadel made a flippant remark in response to complainant #1's husband's question regarding the need for use of the vacuum extractor. This reply was unexpected and complainant #1's husband responded with words to the effect that his wife and child's health was more important than a social calendar.
- Dr. Nadel removed his gloves and left the delivery room after saying words to the effect that you are on your own now.
- Complainant #1's husband and complainant #1 did not expect Dr. Nadel to return and asked about getting another doctor.
- Dr. Nadel discussed an apology with nurse X who then spoke to complainant #1's husband saying that Dr. Nadel had not left the hospital and would return if complainant #1's husband would apologize.
- Only after the apology was made, did Dr. Nadel return and attend the birth, which occurred within two to five minutes.
- There were no complications and Dr. Nadel saw complainant #1 briefly the next day.

These facts are supported by the testimony of complainant #1's husband, complainant #1, Dr. Nadel and in part by the agreed statement of facts submitted by nurse X (exhibit 11), and nurse Y (exhibit 12). While each of the witnesses gave some variation of the exact words that were used as did nurse Y, the Committee does not feel that the differences are significant given the issue that is before it.

The Committee accepts that Dr. Nadel is a busy obstetrician who had a number of OR cases and a delivery the same day that he attended complainant #1 and that he was covering the absence of complainant #1's regular obstetrician but does not feel this should affect his duty to complainant #1.

Dr. Nadel said that it was not his intention to abandon complainant #1, that the nurses knew him and that he had a tantrum and went to the doctor's lounge to ventilate. Dr. Nadel agreed that he

had told the nurse not to call him for the delivery. When Dr. D. was summoned from the emergency room, Dr. Nadel spoke to him and told him to return to the emergency room, that he would look after it. Regardless of his intention, Dr. Nadel left complainant #1's husband and complainant #1 in a situation where the birth was imminent and they believed that he would not come back. They asked if another doctor could come. The Committee feels that, by this action of leaving a patient at a critical time when birth of her first child was imminent in the circumstances described, he breached his responsibility to this patient. This is a serious and unprofessional act.

The Committee notes that, in this case, Dr. Nadel had created an atmosphere where reasonable questions could not be asked or were not welcome and, when posed by complainant #1's husband, were answered in a flippant manner. To request an apology prior to providing care in such circumstances as described, the Committee feels is inexcusable regardless of how hurt, demeaned or debased he may have felt.

The Committee is troubled by Dr. Nadel's attempt to excuse this conduct by saying that it was his way to defuse a tense situation. Dr. Nadel was correct in admitting responsibility for allowing the situation to develop. On this issue, the Committee finds that the allegation of professional misconduct is proven.

### **Case of complainant #2**

The Committee accepts that Dr. Nadel saw complainant #2 on April 19, 1999 for a history of chronic urinary infections. Complainant #2 alleges that Dr. Nadel told her if she did not find a solution she would be dead or on dialysis by 40. Counsel for the College conceded on this count that this was not professional misconduct. The Committee, however, looked at the evidence in assessing credibility.

Dr. Nadel denies making such a statement and indicated that there was no indication of kidney failure. There was no reason for such a comment and, if he had been concerned, he would have sent her to a nephrologist. Complainant #2 testified that she was shocked and that the comment scared her but she did not mention it to Dr. E. when she saw her in October 1999. When her

doctor questioned complainant #2 about the comment at a later time, complainant #2 said she had heard the comment from other urologists in the past and it did not worry her. Complainant #2 gave evidence that Dr. Nadel had told her she was healthy and attractive. She did not take that this referred to her genitals and was not offended. Complainant #2 gave testimony that she did not tell her family doctor that Dr. Nadel had said she had healthy, clean, attractive genitals. This contradicts the testimony given by Dr. E. who said that complainant #2 had told her that Dr. Nadel had said this several times. The Committee is not convinced that the evidence presented by complainant #2 is clear and cogent and is concerned about the accuracy of her recollection. While complainant #2's mother testified that she heard the death or dialysis comment when she attended with her daughter on April 19, 1999, the Committee does not give great weight to her evidence as she was present in the hearing room during her daughter's testimony. Complainant #2's mother also gave evidence about a urine test done by Dr. Nadel being off the chart and neither the OHIP billing records nor the medical chart support that any urine test was performed. The Committee accepts the testimony of Dr. Nadel on this matter.

At the same visit, complainant #2 gave testimony that Dr. Nadel grabbed her buttock as she walked out of the examination room. Dr. Nadel denies this. He offered that he may have touched her shoulder or the small of her back and there was no sexual intent. The Committee feels that the situation is unclear and it is possible that complainant #2 may have misinterpreted or exaggerated what she felt and given the totality of her evidence the Committee accepts Dr. Nadel's testimony on this matter.

No finding of professional misconduct is made with respect to the case of complainant #2

### **Case of complainant #3**

Complainant #3 alleges that Dr. Nadel made insensitive remarks to her when she attended for a missed abortion. Dr. Nadel had no independent recollection of the visit. Complainant #3 alleges that he told her to "Stop crying" and also said, "You wanted a healthy baby didn't you." Dr. Nadel admitted that he may have said something like that in an effort to console her. It was more likely that he said that it was not her fault. He had no intention to offend her. Complainant #3 testified that he told her to take her pants and underpants off. Dr. Nadel said it is his practice to say "take your underclothes off and cover up." The Committee accepts that this was a very emotional time for complainant #3 and that Dr. Nadel did not demonstrate the empathy that would have been

expected from an experienced gynaecologist. The Committee accepts the testimony of complainant #3. The Committee finds the conduct of Dr. Nadel to be insensitive to this patient's condition, however, it is insufficient for the Committee to make a finding of professional misconduct.

Complainant #3 also alleges that Dr. Nadel did not clearly explain to her the treatment options and the advice given. Dr. Nadel agreed that he explained to the patient to some extent but perhaps not fully. It was not clear from his testimony whether he gave her two options (D&C now or D&C later) or three options (D&C now, D&C later, no D&C). There was no dispute, however, that he recommended an immediate D&C. He said to her that, if she were his wife, he would do her right away as she might come back at 3:00 a.m. bleeding to death. She was not having significant bleeding or cramps at that time and it would have been her preference to wait but she felt she had no option and fear took over. Dr. Nadel made arrangements for a D&C later the same day and, after she discussed this with her husband, the procedure was done. The Committee accepts the evidence given by complainant #3.

The Committee feels that Dr. Nadel did not give complainant #3 a full opportunity to be a willing and knowledgeable participant in deciding care. He failed to respect her vulnerability and acted expeditiously. He demonstrated poor communication skills and a thoughtless approach, which is not expected with a doctor of his experience. While the Committee strongly disapproves of this behavior, it does not find that the evidence is sufficient to make a finding of misconduct.

#### **Case of complainant #4**

Complainant #4 alleges that Dr. Nadel failed to provide her with a gown at the time she saw him for a consultation. Dr. Nadel does not dispute this but indicated that covers were located in the examination room in cubicles next to the table. The Committee accepted her evidence that she had a long dress on and as a result was not unnecessarily exposed. It would have been more in keeping with her expectation to be asked to undress and be given a gown. In addition, she acknowledged that she was put off by the request for a \$20.00 administrative fee, his scruffy appearance, his abrupt manner and her observation that his examination table had not been cleared of used towels.

While it would have been more appropriate for her to have been given a gown, the Committee does not feel there is sufficient evidence to support a finding of misconduct.

Complainant #4 also alleges that Dr. Nadel failed to tell her he was going to do a breast examination and then did an inappropriate breast examination. Dr. Nadel does not dispute this. Complainant #4 had a past history of cysts and was of an age to justify a screening breast examination. As a result, the Committee felt that a breast examination was appropriate. Both complainant #4 and Dr. Nadel agreed that the examination was performed first by feeling over top of the dress and then slipping his hand underneath her brassiere. He knew that it was an inadequate examination and that he should have asked her to disrobe to do it properly. She was offended and found the examination perverse. There were no sexual implications or fondling. There is no dispute as to the facts in this matter. The Committee does not condone the manner of breast examination, which clearly was inadequate. Dr. Nadel was unaware of the patient's distress at the time and apologized to her at a later date when he became aware of her complaint. It was evident to the Committee that complainant #4 had an immediate dislike of Dr. Nadel because of his appearance, which she described as unshaven and unkempt or scruffy. She was further offended by the lack of cleanliness in the office particularly a bloodstained towel on the examination table. The request for a \$20.00 administrative fee annoyed her. She was so disturbed by her visit that she made a complaint right away. Subsequently, Dr. Nadel expressed regret and apologized to complainant #4. The Committee accepts her testimony and finds that Dr. Nadel exhibited poor communication skills in dealing with this patient and carried out the breast examination in an expeditious and inadequate fashion. The Committee expresses disapproval of this conduct but, given all the evidence presented in this matter, the Committee feels that there is insufficient evidence to make a finding of professional misconduct.

## **Allegation 2**

On the matter of incompetence, the Committee reviewed in some detail the testimony and circumstances of the first allegation of complainant #1. The issue of risk to complainant #1 when Dr. Nadel left during the second stage of labour when birth was imminent was of concern. Dr. Nadel testified at length about risk both short and long term with respect to a normal delivery and also on the risks and indications for vacuum assisted delivery. With respect to the latter, it was his intention to only use the vacuum extractor for a very short time to assist the completion of the birth and in controlling the process so to achieve the best possible outcome. In the end, there were no

complications, or tears and the vacuum extractor was not used. The balancing of risks in this situation is not calculable. Dr. Nadel is a seasoned obstetrician and his advice given in an acceptable manner at that time would have been very important. It appeared from the evidence that Dr. Nadel, in his judgement, thought the risk to complainant #1 was small but as with any natural

birth not negligible. The evidence supports that Dr. Nadel left the delivery room but contacted the nursing station and remained within reasonable proximity and returned to complete the birth.

The Committee finds that, while some of Dr. Nadel's actions did display poor judgement and disregard of the patient, his actions are not sufficiently egregious to reach the level of incompetence.

The Committee holds the allegation of incompetence as it applies to the information contained in the amended Appendix 1 to the Notice of Hearing not proven.

### **PENALTY AND REASONS FOR PENALTY**

The Committee heard the submissions for penalty on October 24, 2003 following the delivery of the findings.

Counsel for the College submitted that a recorded reprimand and a suspension would be the appropriate penalty. Counsel for the College would have requested a twelve-month suspension if all allegations had been proven; given the findings, it could be less.

Counsel for Dr. Nadel submitted the appropriate penalty was a recorded reprimand and no suspension.

The Committee is aware of the principles of penalty, which apply to discipline tribunals. These include protection of the public, denunciation of the conduct, specific and general deterrence, preservation of the integrity of the profession, rehabilitation and the role of the College in self-regulation.

The mitigating factors that the Committee took into consideration are as follows:

- This was the only time in a long career of a hardworking physician that he has been before the Discipline Committee.
- A binder of letters from patients, nurses and doctors were all strikingly similar in their description of Dr. Nadel as a caring and involved physician.
- Dr. Nadel acknowledged that his conduct was inappropriate.
- Dr. Nadel has already completed the Boundaries Course provided by the College and is planning to take the Communications Course in December.
- Dr. Nadel has been and remains a busy, experienced and committed obstetrician who has a large number of deliveries each month.

The Committee finds that the seriousness of the offense was of such a degree that a suspension is required to adequately denounce the conduct. A suspension clearly expresses both the outrage of the public and the profession and serves as both a specific and general deterrent. The Committee also gave considerable weight to the many letters placed before it in support of Dr. Nadel. The Committee believes this was an isolated incident and, on the evidence before it, does not represent a general pattern of callous care.

It is clear to the Committee that the discipline process has been a painful experience for Dr. Nadel. In view of this and the above mitigating factors, the Committee is of the opinion that the suspension should be suspended on the condition that Dr. Nadel fulfills certain conditions.

The Committee expresses concern that, with a very busy practice representing a huge commitment of time, expeditious management can occur without due regard to the basic principle that patients need to be well informed and active partners in care. For

this reason, the Committee is of the view that referral to the Quality Assurance Committee would be of benefit. The Committee expresses additional concern regarding the office routines for privacy, gowning and cleanliness.

## **ORDER**

Therefore, the Discipline Committee ordered and directed that:



1. Dr. Nadel attend before the panel to be reprimanded, with the fact of the reprimand to be recorded on the register.
2. The Registrar suspend Dr. Nadel's certificate of registration for a period of three (3) months. The three month suspension is to be suspended if Dr. Nadel complies with the following terms and conditions within six (6) months from today's date:
  - i) Dr. Nadel undertake at his own expense an assessment by the Quality Assurance Committee (Q.A.C.), co-operates with their work and abides by the Q.A.C.'s recommendations and complies with any terms, conditions and limitations, which the Q.A.C. may impose on his certificate of registration.
  - ii) Dr. Nadel undertakes at his own expense the communications course offered by the College.
3. Dr. Nadel pay a portion of the College's costs, fixed in the amount of two thousand five hundred dollars (\$2,500.00).

At the completion of the hearing Dr. Nadel waived his right to appeal and the reprimand was administered