

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Walid Abawi, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name and any information that could disclose the identity of the subject of the alleged incident under subsection 45(3) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the Regulated Health Professions Act, 1991.

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

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

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

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

Indexed as: Abawi, W. (Re)

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. WALID ABAWI

PANEL MEMBERS:

DR. P. CHART (Chair)
D. GIAMPIETRI
DR. B. LENT
DR. E. ATTIA (Ph.D.)
DR. C. CLAPPERTON

Hearing Date: April 17 and 18, May 6 and 8, and May 21, 2013
Decision Date: September 12, 2013
Release of Written Reasons: September 12, 2013

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons heard this matter at Toronto on April 17 and 18, May 6 and 8, and May 21, 2013. At the conclusion of the hearing, the Committee reserved its decision on finding.

ALLEGATIONS

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

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991 (“O. Reg. 856/93”), in that he has engaged in 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
2. under paragraph 1(1)34 of O. Reg. 856/93, in that he engaged in conduct unbecoming a physician

RESPONSE TO ALLEGATIONS

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

FACTS AND EVIDENCE

(a) Overview of the Issues

The complainant, Ms A, a Registered Nurse at Hospital X, alleges that Dr. Abawi, a General Surgeon at the same hospital, made unwanted and inappropriate sexual advances to her on a Saturday in 2006. Ms A claims that Dr. Abawi guided her into a washroom after she assisted him in transferring a patient to the Operating Room (OR). Ms A alleges Dr. Abawi attempted to hug her and kiss her on the lips without her consent, and asked her if she was interested in having an affair. Ms A claimed that Dr. Abawi stood in front of the door blocking her exit. Dr. Abawi denied hugging and kissing Ms A and testified

that he invited Ms A into the bathroom and she agreed to join him. Dr. Abawi said he asked Ms A if she was interested in having an affair as he claimed she had been flirtatious with him in the preceding months or years. Ms A had been away on maternity leave for the preceding thirteen months, and returned to work for a handful of shifts approximately four or five weeks before the incident.

(b) Issues to be determined

- 1) Did Dr. Abawi engage in conduct that was disgraceful, dishonourable or unprofessional and/or engage in conduct unbecoming a physician, by making unwanted and inappropriate sexual advances and remarks and by hugging and trying to kiss Ms A on the lips?
- 2) Did Dr. Abawi engage in conduct that was disgraceful, dishonourable and unprofessional and/or engage in conduct unbecoming a physician by confining Ms A without her consent in the hospital bathroom?

In closing submissions, counsel for the College requested a finding on the allegation of conduct unbecoming be made in the alternative.

(c) Summary of the Evidence

The Committee heard evidence from Ms A, Dr. Abawi, as well as Ms A's colleague, Ms B, and her direct supervisor, Ms C. The Committee also heard from Ms D, the Senior Director of Human Resource Workforce Strategy at Hospital X. Ms D gave evidence about hospital policies regarding workplace codes of conduct and the Committee was provided with a copy of the Human Resources Policy, Code of Conduct, Discrimination and Harassment and Workplace Abuse and Violence Program Policy that was in place at the time of the incident. Ms E, a lawyer who was hired by the hospital to conduct an investigation into the complaint by Ms A, also gave evidence. Constable F of the [Region in Ontario] Police Force testified and her notes were provided to the Committee.

In addition, the Committee was provided with segments of a videotape of an interview of Ms A by Detective G of the [Region in Ontario] Police. A partial transcript of that interview was provided.

Ms A wrote two short notes to herself about the incident and the Committee received copies of those. Also in evidence were two letters Dr. Abawi wrote to his Chiefs of Staff, one in September 2006 and another in April 2008.

The Committee was provided with photos and diagrams of the layout of the third floor washroom and adjoining halls and sitting area, and a rough drawing of the nursing station layout on the medical floor where Ms A usually worked.

Although the Committee received an e-mail written by Dr. Abawi's wife to Ms A, it was not given weight in the deliberations of the Committee.

Testimony of Ms A

Ms A is a Registered Nurse who was working at Hospital X. In the relevant time period in 2006, she was a part-time nurse on a medical floor at Hospital X. Occasionally, she worked on the surgical floor of the hospital.

Ms A testified that she was on maternity leave for thirteen months until the relevant time period in 2006. When she was asked to return to work early, she did so, but had only worked a "handful" of shifts by the date of the alleged incident.

Her relationship with Dr. Abawi was strictly professional, according to her testimony. She had spoken to him only a handful of times if she needed to talk to him about a patient concern after she returned from maternity leave. She had no recollection of any specific interaction with Dr. Abawi prior to her maternity leave.

On the Saturday of the alleged incident, Ms A testified that she was working on the medical floor. One of her colleagues had to leave work, thus they were short staffed that

day. Ms A testified that she was required to take over the care of the colleague's patient who was booked for the Operating Room (OR) that day and none of the paper work was ready.

Ms A testified that Dr. Abawi called the medical floor to see if the patient was ready and was not happy about it when told the patient was not. Dr. Abawi then came to the unit and was upset because the patient was not ready, as it was holding up his OR time. Ms A recalled that he was very "grabby" with the chart and "very short with the nurses." Ms A testified that she and the charge nurse put the patient on the stretcher and when they stopped at the nursing station to get the chart, Dr. Abawi excused the charge nurse, and said that he would help transport the patient to the OR.

Ms A testified that they took the patient from the medical floor through the surgical unit that was closed for that time period. She said that she lightly asked Dr. Abawi if he was counting down the days until the surgical nurses would return to their own unit and he replied "yes". She testified that he then asked her if she was interested in taking a position on the medical-surgical floor and she said she would be interested if a position became available.

In the elevator, Dr. Abawi asked her what was new and, according to Ms A's testimony, she replied that she had just returned from maternity leave and she was a new mother and she loved having a new baby. They dropped the patient off at the OR where she recalled seeing the anesthesiologist. Dr. Abawi asked the anesthesiologist where the nurses were and she replied that they were in the lounge waiting for the doctor, according to Ms A's testimony.

Ms A testified that she left the OR and walked down the hall where there was no one around. She passed a set of doors heading for the elevator when she felt someone behind her who took her left elbow and guided her into a bathroom. She looked back to see who it was and it was Dr. Abawi who guided her into a room that turned out to be a bathroom. She did not know at the time that she was entering a bathroom. Ms A testified that Dr.

Abawi shut the door and came at her quickly, hugging her and trying to kiss her on the mouth, although she turned her head and he kissed her cheek.

Ms A testified that she put her hands on his chest and said, “No, what are you doing?” and pushed him off her. Dr. Abawi then said, “You know, I find you very, you know, I think you are beautiful. I find you very attractive. This can be our little secret between you and I.” Ms A said that when she pushed him off the first time, she said, “I’m married, you’re married, I have to work with you. No, absolutely not.”

Ms A said that he then came at her a second time and again tried to hug and kiss her on the mouth but she turned her head and the kiss landed on her cheek and she pushed him off and said “no.”

Ms A testified that he was then leaning up against the door, blocking the door with his hip and arm across the door and on the wall, was leaning into her and he said, “Well, if you weren’t married, would you reconsider?”

After the doctor asked her if she would reconsider having relations with him, she said, “No, absolutely not.” Ms A testified, she then said, “That’s it. I’ve had enough.” When she went to get the door handle, she had to bend down under his arm to reach it. Dr. Abawi then said, “Okay, I’ll go first,” shut off the bathroom light, opened the door and left.

When they initially went into the bathroom, Ms A testified that she had her back to the toilet and Dr. Abawi had his back to the sink, although both were closer to the door. She said later that after trying to hug and kiss her twice, he was leaning on the door with his left arm across the door and onto the wall, leaning into her. Ms A testified that during the time they were in the bathroom, Dr. Abawi was “shushing” her saying “shh, for me to be quiet.”

After Dr. Abawi left the bathroom, Ms A said she shut the door and splashed some water on her face and tried to compose herself for three or four minutes. She testified that she was terrified as she thought the doctor was going to rape her, because of the way he came at her so quickly. She said she was in shock.

Ms A said that when Dr. Abawi took her arm, she didn't know what was happening and thought he wanted to talk to her about patient information concerning the patient that they had just taken to the OR.

Ms A testified that "Never in a million years would I ever have thought that I would be pulled into a bathroom and sexually assaulted at my own place of employment by somebody who I'm supposed to trust." She testified again that she was terrified, in shock and scared. She had tried to leave, she said, and Dr. Abawi was in front of the door, blocking the door.

Ms A testified that she returned to her unit and went to find her co-worker, Ms B, and asked to speak to her right away.

After she found Ms B, they went to a private stairwell and she told her what had happened. She then went to a private phone off the unit and called her husband. She testified that she didn't tell any others on the unit that morning, as she was scared, humiliated, and she didn't want to be labeled or to be the talk of the hospital, so she kept it quiet. She wanted to go home, but as they were already short staffed and she didn't want to leave her colleagues even more short staffed, she stayed. She testified that she did call in sick for the next day, however.

On Monday, Ms A stated that she called her boss, Ms C, and told her she had to meet with her face-to-face. She met her at 9:00 a.m. on Monday morning. She testified that she told Ms C and another woman from management, Ms H, what had happened. Ms A testified that she made a formal complaint and had a meeting with Human Resources and

her union representative. She testified that she asked for a written apology but never received one. She followed up several times and was told that no decision had been made.

Ms A testified that she took steps to avoid Dr. Abawi at all costs after the incident. She walked the other way when she saw him coming, and no longer took shifts on the surgical unit. Ms A testified that if she was in the hall, and Dr. Abawi came on the unit and saw her, he would start whistling in a cocky tone to make himself known to her. As soon as she saw him, she would leave.

In 2007, a year after the incident, while attending a workplace sexual harassment seminar organized by Human Resources at the hospital, Ms A testified that she was told that there was zero tolerance for sexual harassment at her hospital, and inappropriate behaviour was to be reported. After the seminar, she talked to the presenter and told her that she had reported what had happened to her and nothing was done.

Ms A denied in her testimony that she had ever done anything to make Dr. Abawi think that she was interested in him sexually. When it was suggested to her in cross examination that she had concerns that Dr. Abawi was going to talk to others about being in the washroom with her and she was going to look like a woman who had given him the “come on,” Ms A replied that was impossible. She also denied the suggestion that when she went into the washroom with Dr. Abawi, and he told her he wanted to have an affair with her, she panicked as it had gone too far. She said she wanted an apology and Dr. Abawi couldn’t even give her that. Ms A went on to say that she had been nothing but professional with the doctor.

Ms A testified that she told her husband she was reluctant to come forward to the hospital on Monday morning, not because she was going to be portrayed as someone who had given the doctor the “come on,” but because she was afraid that Dr. Abawi was going to lose his job and that was not something that she wanted. She was reluctant to come forward because she didn’t want to report the incident. Her husband encouraged her to do it for her children. She testified that, “if it wasn’t for them, because if it happened to

them, I would say the same thing to them, to stand up for themselves, because I did nothing wrong.”

Ms A testified in cross examination that in the bathroom, her back was to the toilet and Dr. Abawi’s back was to the sink, and they were in the middle of the room but closest to the door. They were very close together and when given a diagram of the bathroom layout, she placed marks to indicate their positions.

Ms A was questioned about Ms B’s statements that when Dr. Abawi closed the door, he had Ms A positioned with her back against the door and his arm against the door, that is, she was pinned against the door. Ms A testified that she was not aware Ms B had said that and, if that is her memory, then it is totally wrong. She also said that Ms B is wrong if she testifies that Dr. Abawi tried to kiss her only once, as she never told her that.

Ms A testified that if Ms C and Ms H testify that Dr. Abawi pinned her against the wall, they would be wrong as that is not what she said to them.

Ms A went to the police station to get a restraining order against Dr. Abawi and spoke with Constable F who took notes that day. According to Constable F’s notes, Ms A told her that Dr. Abawi locked the door, but Ms A testified that she has no memory of whether or not the doctor locked the door and no recollection of telling Constable F that information.

She testified that Constable F’s note that Ms A asked to leave the bathroom and Dr. Abawi refused to let her go is not correct. She didn’t ask to leave and the doctor did not refuse to let her leave.

Constable F also recorded that Ms A had provided a written letter from a lawyer advising that the hospital is concerned for her safety. Ms A testified that the officer must have misunderstood her. She said what she brought along was a summary of Ms E’s

investigation for the hospital. In reply evidence, Ms A said that she was never asked to sign Constable F's notes or verify them, and had, in fact, never seen them before.

Following her meeting with Constable F, Ms A met with Detective G in order to have Dr. Abawi charged with sexual assault and to have a restraining order issued. The Committee saw a videotape of a portion of that meeting. Ms A denied that she intended to convey that Dr. Abawi was leaning against the door the whole time. She clarified that he was standing in front of the door blocking her exit and after the second time that he tried to kiss her, he leaned on the door. Ms A stated that she didn't know how many steps he took when he "swooped in" to hug and kiss her.

Ms A testified that she told Detective G that no force was used to get her into the washroom and that the doctor had guided her arm. She testified that when the doctor took her arm, she turned to look at him.

Ms A agreed that she told Detective G that her feet were up against the toilet, but she clarified at the hearing that she meant to say her back was to the toilet. Ms A testified that she is not sure if her feet were against the toilet as she can't recall now. When asked about saying this to others, she said that it is possible that her feet were against the toilet when she pushed Dr. Abawi back.

Ms A testified that at her husband's suggestion, she made some notes on the Saturday of the alleged incident, the day it happened. She agreed that her notes written that day do not say that Dr. Abawi kissed her cheek twice, they only say he kissed her cheek once, although Ms A testified that he did kiss her cheek twice after he tried to kiss her on the lips and she turned her head.

Her note said, "I moved away. Dr. Abawi was standing in front of the door with his hand leaning on the wall." Ms A said that was accurate. However, she clarified that when she wrote "I moved away," she meant that she turned her cheek and her face and he ended up

kissing her cheek and that is what she meant by “I moved away.” She denied that she meant that she physically moved away.

Ms A typed a letter for her manager as requested and dated it the date of the alleged incident, even though it was typed shortly after her meeting two days later with her manager and other hospital personnel.

Ms A wrote in her letter that, “At the time of the incident, I had my back to the toilet and Dr. Abawi was standing in front of the door with his hand on the wall, leaning into me,”. In cross examination, she testified that this was his position after he attempted to hug and kiss her.

Ms A agreed that she met with the hospital lawyer/investigator, Ms E, on four occasions in 2008, and according to Ms E’s notes, Ms A told her that Dr. Abawi tried to kiss her twice.

The Committee’s analysis of Ms A’s credibility will be dealt with in a following section of the Reasons.

Testimony of Ms B

Ms B is a Registered Nurse who worked on a medical unit at Hospital X. On the date of the alleged incident, she recalled she was with a patient when Ms A came and asked her from behind the curtain if she could speak to her right away. She testified that they went to a secured door that leads to a stairwell, a place that was private. Ms B testified that Ms A seemed terrified to her and she was visibly shaking and crying. She was tear-stained and her hands were shaking. Ms B testified that her primary concern was Ms A’s well-being, as she didn’t know what had happened.

Ms B described Ms A as an excellent communicator, very professional and an extremely thorough nurse. Ms B went on to testify that she was very conscientious with her plans of care and her comportment. Ms B also stated that Ms A gives excellent detailed reports on

the patients at the end of the shift. She also described her as honest and forthcoming, extremely compassionate and incredibly thorough. She said Ms A is a great nurse.

Ms B testified that Ms A was the same with physicians as she was with nurses. She testified that she had never observed anything in particular with Ms A's interactions with Dr. Abawi and had never seen her interact in a way that was flirtatious or sexual.

Ms B confirmed that the nursing station was a busy place with computer terminals, the phones always ringing, the centralized call bell system, hard copy chart binders and a unit clerk.

In cross-examination, Ms B agreed that she knew the incident was serious and she wanted to commit it to memory so she would be a good witness in the future. Ms B testified that she asked Ms A questions. Ms A told her that Dr. Abawi did try to kiss her and when she was asked if Dr. Abawi tried to touch her anywhere else she said no. Ms B asked Ms A if he touched her top or her bottom and Ms A said no. Ms B testified that Ms A confirmed that Dr. Abawi did not touch her body. She stated that she was not sure if he tried to kiss her more than once but she did recall Ms A saying that if she had not turned her cheek, contact would have been made with her mouth.

Ms B recalled being interviewed by Ms E in the fall of 2008. Ms E noted Ms B told her Ms A said that Dr. Abawi came at Ms A once to kiss her, but Ms B could not recall if it was one or two kisses. Ms B testified that she recalled Ms A saying she had her back against the wall and the doctor's arm was over his head, kind of leaning over her, although Ms B did state that she didn't know specific positioning.

Ms B agreed in cross examination that if Ms E recorded that she said Dr. Abawi closed the door behind Ms A and had Ms A positioned so her back was against the door and his arm was against the door, that is what she told her. Ms B testified that when she spoke to the College investigator in January 2012, she told him Dr. Abawi pinned Ms A up against

the wall and tried to kiss her. She agreed that was her recollection of what Ms A told her on the date of the alleged incident in 2006.

In reply, Ms B confirmed that she was asking the questions of Ms A and she did not get an exact play by play of what occurred in the bathroom from one minute to the next.

Ms B gave her testimony in a straightforward way and agreed that she had tried to recall the discussion with Ms A as she knew it may be important someday. The Committee found her believable.

Testimony of Ms C

Ms C was the clinical leader and Ms A's direct manager at the relevant time period in 2006. She said that Ms A called her at her office and asked to come in on the Monday morning, two days after the alleged incident. According to Ms C's testimony, when Ms A first arrived at her office, Ms A looked a little subdued and then, as she began to relay her story, she began crying and sobbing and Ms C had to tell her to relax. Ms C called Ms H who was the site manager and her direct manager.

Ms C testified that she had to wait a few minutes so Ms A could regain her composure before they went to Ms H's office. Ms C testified that the Labour Relations person was also called to the meeting but Ms C herself was excused. She was not involved in any part of the complaint subsequently.

As Ms A's supervisor, she has had opportunity to observe her and see her interacting with others and she testified that she only witnessed Ms A interacting with other health professionals on the medical floor, not the medical-surgical floor. She said that she had never had a complaint about Ms A's behaviour and testified that Ms A was a very good nurse who interacted well with others in a very professional way. Ms C testified that Ms A took her job and patient care very seriously.

Ms C said that she never saw Ms A be sexual or flirtatious with others.

Ms C testified that there were only two surgeons at the hospital and on weekends, there was no activity in the OR unless there was an urgent case, in which case, only two OR nurses would be called in. No porters, cleaners or other OR staff worked on weekends.

In cross examination, Ms C was asked if she heard Ms A tell the administration staff that Dr. Abawi had pinned her to the wall. Ms C testified that the word ‘pinned’ did not ring a bell, although she did recall hearing that Dr. Abawi blocked the door and tried to kiss her.

Ms C agreed in cross examination that Ms A is outgoing and “bubbly.”

The Committee found Ms C credible with testimony presented in a straightforward way.

Testimony of Ms D

Ms D is Senior Director at Hospital X and was Director of Human Resources in the relevant time period in 2006. She was aware of the incident.

Ms D testified that Ms J was doing a seminar on workplace harassment. Ms A approached Ms J and told her that she had submitted a complaint a year before and never heard anything back. Ms J then told Ms D.

Ms D was presented with the Human Resources Policy, Code of Conduct, Discrimination and Harassment and Workplace Abuse and Violence Program and testified that it was in effect from 2001 to 2007. She said the policy applied to everyone in the organization and there was an obligation on the staff to read the policy and be aware of it.

Ms D read parts of the policy. Only parts of it are presented here for the purposes of this decision, although the Committee received a copy of the lengthy document.

Ms D read out from the hospital policy that “Sexual Harassment is unwelcome conduct of a sexual nature. It includes sexual advances, requests for sexual favours or other verbal or physical conduct of a sexual nature that is unwelcome...” She read the types of conduct,

and those included sexually suggestive or obscene comments or gestures, as well as leering, touching, advances, propositions, or requests for sexual favours. She went on to read that any behaviour that amounts to harassment may be considered professional misconduct.

She also read the passages that outlined the consequences for a complainant who makes a complaint frivolously, maliciously or in bad faith.

Ms D testified that she never had any complaints about Ms A, nor had she heard of any flirtatious behaviour or sexually suggestive behaviour.

The Committee found Ms D credible.

Testimony of Ms E

Ms E is a lawyer who does workplace investigations. She was retained by Hospital X to investigate Ms A's complaint.

She had the opportunity to interview Dr. Abawi twice and she took notes as she asked the questions in her meetings with him on September 25, 2008 and on November 1, 2008.

Ms E testified that she had been provided with a letter in which Dr. Abawi was taking the position Ms A was acting flirtatiously and he brought her to the bathroom to confront her about her flirtatious behaviour. She said that Dr. Abawi told her that he wanted to put an end to Ms A's flirtatious behaviour. Dr. Abawi told her that they interacted about two times a week before the date of the alleged incident.

According to Ms E's testimony, Dr. Abawi indicated that Ms A made eye contact, smiled, "made herself available," and engaged in flirtatious behaviour any man would recognize. When Ms E asked him what was flirtatious about what he had just told her, her notes indicate that Dr. Abawi told her, when a woman looks at a man and puts her hand through her hair and touches her groin and smiles, she is being flirtatious.

Dr. Abawi told her that Ms A would always find an excuse to be on the surgical floor and when he did rounds, she would be there. He said he saw her often and didn't recall how many times she was flirtatious and touched her groin, whether, four to five or ten to twelve, but Dr. Abawi told her that he recalled two specific incidents.

Dr. Abawi said on one occasion, Ms A was sitting beside him and they were talking about a patient and she opened her legs and touched her groin while she was angled toward him.

Dr. Abawi said Ms A's behaviour was very explicit the last time. Dr. Abawi said no one was around. Dr. Abawi told her that Ms A's behaviour was evolving and because it was more explicit, he thought that he should talk to her.

When Ms E asked how long prior to the date of the alleged incident Ms A was doing this, Dr. Abawi said a couple of months maybe.

Dr. Abawi said another time, they were sitting at the computer desk and Ms A kneeled down and spread her legs and held her groin as she was going in the file drawer in the filing cabinet, which was about two feet in height. She was facing him sideways with her face and body. Ms A put her hand "down there." Dr. Abawi said this incident was before the other incident and occurred weeks or months before, and he didn't know when. Dr. Abawi said her behaviour was very obvious. He told Ms E these events took place at the nursing station and the nurses could see.

According to Ms E's record of the interview, Dr. Abawi indicated that he asked Ms A if he could speak to her in private and asked her to go into the bathroom with him, and he gestured about ten to fifteen feet away. She said yes and they entered the bathroom. Dr. Abawi told Ms E that he had decided two to three months previously that he had to talk to her and he hadn't had a chance to do so previously. It was not a top priority, he told her. When the opportunity to speak to her presented itself, he thought he should take it.

Dr. Abawi told Ms E that when the Chief of Staff contacted him, Dr. Abawi told him that he had a conversation with Ms A because she was being flirtatious. He said it was his idea to do an apology and he hand wrote it, as he didn't want his secretary to type it. He didn't mention Ms A's flirtation in his first letter as he was trying to make it clear that his interaction was no more than conversation.

When Ms E told Dr. Abawi that Ms A was on maternity leave in the year prior to the incident, he said that it was hard for him to say when it happened and his dates were just guesses.

Dr. Abawi went on to tell Ms E that Ms A's behaviour was going on for more than a year, perhaps even two years previously.

Dr. Abawi said that he didn't speak to Ms A in the hall because the nurses move in and out of the OR. He told Ms E that she agreed to go into the bathroom. Dr. Abawi said that he was going to operate and if he had any intentions, this was not the time, according to Ms E's testimony.

Ms E said that the precise location of the pair in the bathroom was not of particular concern to her given other evidence.

The Committee found Ms E's evidence credible overall. She gave it in a straightforward way and had her contemporaneous notes to refer to.

Testimony of Dr. Abawi

Dr. Abawi is a general surgeon who has been in practice since 1995 working at Hospital X.

On the Saturday of the alleged incident, he had an emergency surgery and he went to the medical floor to pick up the patient. Ms A helped him move the patient to the OR.

After they dropped the patient off at the OR, Dr. Abawi testified that he followed Ms A out of the room, as he wanted to speak to her. He testified that he put his hand on her shoulder and asked her if she would go into the bathroom and speak privately and she said okay.

Dr. Abawi said that they walked down the hall together and opened the door to the next hall where the patient holding area is. He testified that he recalls opening the bathroom door and she walked in and he turned on the light and he closed the door and positioned himself where the door was.

During the encounter in the bathroom, Dr. Abawi testified that he told her that he found her behaviour toward him flirtatious and suggestive and if that was true, was she interested in having an affair with him. She said “no”, that she was just being the way she is, being nice, and she was married and not interested in an affair. Dr. Abawi testified that he asked if she was sure, and she said yes. He then apologized and said that he was sorry and that he had misunderstood her behaviour and respected the fact that she said “no”. He said he opened the door, walked out and never spoke to her again.

If Ms A had been interested in an affair, Dr. Abawi testified that he would have pursued it. He denied leaning against the door or preventing her from leaving at any time or attempting to hug her or put his hands on her or kiss her. Dr. Abawi said that he felt embarrassed and stupid when he left the bathroom. He said that he had made a fool out of himself because he misinterpreted her behaviour and he did feel “pretty bad.”

Meeting with Chief of Staff Dr. K and First Letter

Dr. Abawi testified that he met with the Chief of Staff, Dr. K, on September 15, 2006, and was told that a nurse had made a complaint about him attempting to kiss her. He testified that he was very uncomfortable and embarrassed. He testified that he thinks he told Dr. K that he didn’t kiss anyone and that he was responding to behaviour that he perceived to be flirtatious and suggestive and that, obviously, he was wrong and he was sorry. He testified that he didn’t tell Dr. K that Ms A had been flirting with him for over a

year, or that it had become progressive and excessively explicit over the course of a year. However, he did say that he thought he had implied that he was interested in having an affair with her. In cross examination, he said he did not remember whether he said that he was interested in having an affair.

When he spoke with Dr. K a couple of days later, he said that he would be happy to write a letter of apology as he felt “awful” about the whole thing, as well as “embarrassed” and “stupid” because he had misperceived Ms A’s behaviour. He subsequently wrote a letter of apology.

Dr. Abawi testified that Ms A was excessively flirtatious, “as he perceived it,” from the time he first met her. He admitted that when he told Dr. K that he found her flirtatious behaviour uncomfortable, it was not the case, as he enjoyed it and he wanted to have an affair with her.

However, when Ms E asked if he raised the flirtation issue at the first meeting with Dr. K, Dr. Abawi replied no, he raised it at the second one on the telephone.

Dr. Abawi went on to testify that he could not remember if he told Dr. K that he wanted to have an affair with Ms A. Later, Dr. Abawi testified that he probably didn’t clearly tell Dr. K that.

After meeting with the Chief of Staff, Dr. Abawi agreed that the letter he wrote said that he had an interaction with Ms A that involved nothing more than a simple conversation. He testified that he didn’t put more in the letter because he wanted to “defuse” the situation as he was hoping the matter would just stay quiet. He said he didn’t want to make it complicated.

In the next paragraph of the letter, he agreed that he said, “It is absolutely not true that I tried to kiss her on the mouth or asking her to keep any secrets.” He did apologize in the letter for putting Ms A in a difficult situation and said that nothing like that would ever

happen again. He testified that he was trying to say it was all a simple misunderstanding and that he was sorry for his ignorance, misunderstanding or stupidity.

Dr. Abawi agreed in testimony that his first letter did not contain any mention of Ms A's flirtatiousness, although he does deny he tried to kiss her. He agreed that he didn't include details of her allegedly obscene sexual behaviour, or the fact that he wanted to have an affair with her. He admitted that he apologized for making her uncomfortable, even though her accusation was false. When he apologized for "putting her in a difficult situation", he testified that he was apologizing for confronting her about her behavior, which he wrongly perceived as flirtatious. When asked whether he was testifying that he confronted her because her behaviour was flirtatious or suggestive, or because he wanted to have an affair with her, he said that he was "confronting her to find out if she wanted to have an affair with me."

When the letter said that nothing like this will ever happen again, he meant that he would never approach her again about having an affair or having any form of a relationship beyond a professional one.

Second Letter

Dr. Abawi testified that he didn't hear anything more about the first letter until he received another letter from the hospital from the new Chief of Staff, Dr. L, telling him that the case was re-opened and was going to be investigated.

Dr. Abawi wrote a second letter to Dr. L on April 8, 2008, responding to the complaint. In this letter, Dr. Abawi wrote that Ms A had been acting toward him in a manner that was excessively friendly and flirtatious and that her behaviour progressed to be much more flirtatious and suggestive in the year prior to the incident. This included Ms A extending her tongue and licking her lips as well as spreading her legs and touching her groin in front of him. Dr. Abawi testified those comments were true then and are true now.

Dr. Abawi confirmed that he wrote in the second letter that he chose to ignore her behaviour toward him but would address it directly if an opportunity arose, as he found it awkward and was unsure how to approach the issue. He testified that he was implying that he wanted the behaviour to stop, when, in fact, he wanted to talk to her about having an affair. Dr. Abawi testified that he neglected to mention that to Dr. L in the second letter.

In his testimony, Dr. Abawi stated that he knew that his original letter in 2006 would not be sufficient for the new administration and he put forward to the hospital that he was a victim of sexual harassment. He agreed that he knew about the seriousness of this type of complaint. He agreed that he made it look like he was uncomfortable with Ms A's behaviour and that she was sexually harassing him.

Dr. Abawi was taken to parts of his letter that said he and Ms A transported a patient to the operating room and he had an opportunity to discuss her flirtatious behaviour. According to the letter, after they dropped the patient off at the operating room, they were standing in the hall as the nearby rooms were busy. He said that he suggested they move to the bathroom to have some privacy. He said in the letter, this was agreeable to her. Dr. Abawi testified that he wanted to talk to Ms A in order to find out if she was interested in having an affair with him.

Dr. Abawi testified that it was not true that he wanted an explanation of her flirtatious behaviour. He also acknowledged that when he wrote that he had met Ms A about a year before on the medical floor of the hospital, it was also wrong, as he could not remember when he met her and could not recall she was pregnant. It was also not true when he wrote in the letter that he saw her regularly on the floor as she looked after his patients because she was not at work then. He testified, "I came up with a number and I put it there." He said that he was angry, frustrated and concerned about his hospital privileges and also unwilling to admit that he was interested in having an affair with Ms A as he was married and didn't want his wife to find out.

He stated in the letter that “Unfortunately, [Ms A (sic)] often acted towards me in a manner that was excessively friendly and flirtatious”, and he testified that this was true, but agreed that the word “unfortunately” was not true, as it was not unfortunate from his point of view, since he wanted to have an affair with her. He agreed in testimony that he found her behaviour scintillating and it piqued his interest.

Dr. Abawi testified that his comment in the letter that Ms A’s flirtatious behaviour toward him progressed to be much more flirtatious and suggestive as time went by, was true. With regard to the fact that this behaviour progressed over the year prior to the incident in the bathroom, Dr. Abawi testified that it could have been a year and a half or two years previously.

Dr. Abawi testified that when he said that Ms A touched her groin in his letter of April 8, 2008, he meant rubbing her thigh and he said he was trying to correct that, as it was “just a matter of vocabulary.” He agreed that he wanted to paint a certain picture for Dr. L and Ms E. Dr. Abawi testified that he was in a desperate situation and he was “screwed up” and his mind was not working well. He denied that he exaggerated Ms A’s behaviour.

Interviews with Ms E

Dr. Abawi met with the hospital investigator Ms E in September and November of 2008. He testified that the version he wrote in the second letter is the version he told Ms E.

Ms A rubbed the inside of her thigh on a couple of occasions, Dr. Abawi said, although he doesn’t recall the exact date or location. He told Ms E that he couldn’t recall the exact dates, times or places. He testified that he didn’t recall Ms A being pregnant or being on maternity leave. He testified that in his letter to Dr. L, he had to give a time and he just gave a year, and “it was a year, six months, two years, I don’t remember.”

With regard to whether he told Dr. K in his meeting with him about Ms A’s flirtatious behaviour, Dr. Abawi testified that he did tell the Chief of Staff she had been flirtatious at their first meeting and probably in his second conversation with him as well. Dr. Abawi

testified Ms E would be wrong if she testified he told her that he only mentioned the flirtatiousness to Dr. K in the second conversation on the phone. Later, when pressed, he said that he “probably” did on both occasions, and later testified he was “pretty sure” he told him at the first meeting that she was flirtatious and later, he testified that he was “sure” he told him in both conversations.

Dr. Abawi testified that two incidents of Ms A’s flirtatious behaviour stood out as they were so explicit. He described one incident when he was sitting on the one side of the desk while Ms A was looking in a filing cabinet on the other side of the desk. He said she kneeled down and opened her legs a little bit and started rubbing inside her thighs while talking to him. He agreed that he had never used the word “thigh” before he said it at the hearing. Dr. Abawi agreed that when he was interviewed by Ms E, he was describing one incident when Ms A was kneeling and she opened her legs slowly and while doing this, she put her hand “down there” and he didn’t use the word groin but meant inside of her thigh. He agreed that “down there” does suggest Ms A’s private region, as does “groin”.

Dr. Abawi told Ms E about another occasion when Ms A sat beside him and she opened her legs and touched her groin. However, he said that if Ms E wrote that Ms A “held her groin,” she probably got it wrong.

Dr. Abawi said that Ms A’s flirtatious and explicit behaviour stood out and it happened exactly as he told the Panel.

Dr. Abawi agreed that in his letter of April 8, 2008, he wrote Ms A’s flirtatious behaviour started about one year previously. However, when asked about dates by Ms E, he said he “had to come up with something” when she kept asking him about specific dates. He gave her the approximate date of two to three months before the date of the alleged incident.

He said when Ms E asked him roughly how far in advance had he made up his mind to speak to Ms A, he told her two or three months because she specifically insisted that he

give a date. Dr. Abawi went on to testify that Ms A's explicit behaviour that stood out in his mind happened "two years ago, two and a half years ago, two years and nine months ago", and he couldn't remember.

Dr. Abawi testified that the flirtatious behaviour and the two incidents of her touching or holding her groin must have happened when they first started working together, before Ms A went on maternity leave. He testified that he didn't recall her being pregnant and he probably would have remembered if she was seven months pregnant, kneeling and holding her groin. Dr. Abawi testified a pregnant woman would not have done those things. Dr. Abawi testified that "by deduction", they must have happened when she came back, during the four weeks she was back.

Dr. Abawi acknowledged that he didn't recall when Ms A's explicit behaviour happened, whether it was two years before or three weeks before the date of the alleged incident, after she came back to work. He agreed that if it happened two years previously, he thought that he would talk to her on the date of the alleged incident as he was alone with her.

The Incident in the Bathroom

In cross examination, Dr. Abawi admitted that there was restricted access to the third floor operating rooms in the hospital.

Dr. Abawi testified that there was no one around on the third floor when they went into the washroom. He testified that he didn't recall saying to Ms A that he found her beautiful and attractive, but he did recall telling her that his impression of her behaviour towards him was that she was flirtatious and suggestive. And, if that was true, he asked her if she was interested in having an affair with him.

He testified that after she said "no", he then asked her if she was sure and she said "yes". Dr. Abawi also testified that the moment Ms A walked into the bathroom with him, he

thought she was interested, so when she said “no”, he was surprised. When she said “no”, he said he respected that and he left the bathroom.

Dr. Abawi testified that when he wrote in his letter that he wanted to speak to her privately in the bathroom, as he didn’t want to air the matter in public, it was true, except that he wanted to discuss having an affair. Although there was no one around and the adjoining waiting area was empty, Dr. Abawi testified that he thought Ms A wanted something sexual so he wanted to go behind closed doors. He testified if she agreed to it, he was prepared to start that sexual relationship right then and there. The waiting room didn’t afford the same privacy. He also said that he couldn’t invite her for coffee as it was public and he couldn’t have an affair in a small town. He agreed that he spoke to her in the bathroom, rather than the waiting area, as beginning a sexual relationship was in the realm of possibility and they could have commenced sexual relations.

Dr. Abawi denied he tried to hug and kiss Ms A or that he said anything like “this can be our little secret.” He said “keeping it secret” because a married person going into a bathroom with a married man would mean that it was going to be clandestine; it was a given.

Dr. Abawi denied in his testimony that he leaned against the door. He stated that she was against the wall close to the toilet with about five feet of distance between them. He agreed that he was saying to her that she engaged in a pattern of egregious flirtatious behaviour and that when they were in the bathroom they were five feet apart. He denied moving closer to her.

The credibility of Dr. Abawi will be dealt with in a following section of these Reasons.

Testimony of Constable F

Constable F testified that she interviewed Ms A and made notes in her police notebook when Ms A came to the police station. According to her notes, she made them shortly after Ms A came in. She testified that her job was to determine if a criminal event

happened. She recalled that Ms A had some paper work with her but doesn't recall what it was. Constable F testified that Ms A came because she was concerned for her safety, according to her notes, and because of the sequence of events with the doctor. She did not give Ms A her notes to read or sign and admitted that she was not conducting an investigation at that time. She was doing a report. The detective who got the report would do a detailed interview.

The Committee did not find that Constable F's notes or testimony were particularly helpful, although she was credible. She wrote her notes in the third person, suggesting some interpretation on her part. She wrote that Ms A brought a letter from the hospital when this was not the case; she brought the summary from Ms E's investigation. Her job was to determine if a criminal event happened as she said and it was not her job to get all the details. The detective would be investigating in more detail.

DECISION AND REASONS

The Law

The Committee recognizes that the College bears the onus of proving the allegations against Dr. Abawi. As stated in the case of *F.H. v. McDougall*, there is no sliding scale for the standard of proof in civil cases. There is one standard of proof and that is on the balance of probabilities based on evidence that is clear, cogent and convincing. The Committee understands that irrespective of the seriousness of the allegations or the consequences for the complainant and the doctor, the evidence must be scrutinized with care and the same standard of proof applies. These principles apply to disciplinary proceedings involving physicians as affirmed in the case of *Osif v. College of Physicians and Surgeons of Nova Scotia*, [2009] N.S.J. No 111 (C.A.).

Credibility Assessments

The Committee understands its responsibility to have regard for the inconsistencies in the evidence of witnesses and to consider them in the light of all the evidence as set out in

F.H v McDougall. The *McDougall* case outlines that inconsistencies between evidence given at trial and evidence given on another occasion does not preclude a finding that the witness was credible. The Committee understands that the evidence, including any inconsistencies, must be carefully scrutinized and considered.

It is also held in *F.H. v McDougall* that corroboration of evidence is not required and the Committee understands that it is free to come to its findings solely based on whether the complainant, Ms A, or Dr. Abawi, is believed. In addition, if one of the parties is believed over the other, it may mean explicitly or implicitly that the other party was not believed on an important issue in the case, provided the Committee considers all the evidence.

The Committee had inconsistencies to analyze in this case and was helped in its assessment of them by the following from *R. v M.G.* [1994], O.J. No. 2086(C.A.) at para 23:

Probably the most valuable means of assessing the credibility of a crucial witness is to examine the consistency between what the witness said in the witness box and what the witness has said on other occasions, whether on oath or not. Inconsistencies on minor matters or matters of detail are normal and are to be expected. They do not generally affect the credibility of the witness. This is particularly true in cases of young persons. But where inconsistency involves a material matter about which an honest witness is unlikely to be mistaken the inconsistency can demonstrate a carelessness with the truth. The trier of fact is then placed in the dilemma of trying to decide whether or not it can rely upon the testimony of a witness who has demonstrated carelessness with the truth.

Passarello v. Passarello summarizes from Sopinka J. and Lederman J., *The Law of Evidence in Canada*, 2nd ed. (Toronto: Butterworths, 1979) further instructions regarding credibility that the Committee found useful. From para 6:

Several criteria are relevant, including the reasonableness of the evidence, contradictions in the evidence (internal consistency), whether or not the witness'

character has been impugned, personality and demeanour, corroboration (external consistency), self-interest, powers of observation and recollection, and capacity of expression. Untruths which are brought out in examination-in-chief are not as damaging to credibility as untruths which are brought out in cross-examination by other evidence. The court should attempt to reconcile direct contradictions between the evidence of the witnesses.

The Committee is also cognizant of the fact that demeanour is an unreliable predictor of the accuracy of the evidence of a witness. However, it is a relevant factor in assessing credibility as outlined in *Law Society of Upper Canada v. Neinstein* (2010), 99 O.R. (3d) 1 (C.A.).

Credibility of Ms A

The Committee found Ms A credible for several reasons. The Committee placed the greatest weight on what Ms A said in her testimony. Less weight was given to what others reported of her statements, although this was examined within the context of all of the evidence. Her testimony at the hearing about how she came to be in the washroom with Dr. Abawi and what transpired there was unwavering in its clarity and consistency. The handwritten note she wrote on the day the incident occurred and another typed a few days later, no doubt assisted Ms A in recalling the incident. The Committee was of the view that her nursing training with regard to observation and charting probably assisted her in that regard. The defence argued that there were inconsistencies in Ms A's version of events that affected her credibility and the Committee considered those.

The defence argued that Ms A's notes were more succinct than what she said in her examination in chief and that may be true, but Ms A told the Committee that her notes were just her own little "blurb" and just a general version of what transpired. Although she tried to capture what happened, the Committee heard no evidence to suggest she was anything other than naïve to this type of experience. There was no suggestion that they were concocted, embellished or elaborated on inappropriately in the Committee's view.

In her typed letter, Ms A used the word “attempt” in describing Dr. Abawi’s hug and kiss, when she testified that Dr. Abawi did hug and kiss her. The Committee is of the view that Ms A testified to the word “tried” or “attempted” to kiss her when she was in fact talking about the doctor trying to kiss her on the mouth and she averted that by turning her head, with the result that he kissed her on the cheek. The Committee does not find that this is an inconsistency. Defence counsel questioned Ms A about why she changed the word “sink” to toilet in her typed version of her note and the Committee was satisfied that she had simply written the wrong word. Ms A never wavered on where she was standing in the bathroom. Her description of her position in the bathroom was also consistent with what Dr. Abawi said, in that she was closest to the toilet and he was “against” the door, or he “stayed where the door was.”

The Committee was not presented with exact measurements of the bathroom, although it was provided with the measurement of 72 inches as the distance between the middle of the door and the toilet. Although it was argued that Ms A’s version of the physical dynamics of what transpired in the bathroom was not possible, the Committee found otherwise. Both parties’ description of where they stood was consistent, and taking into account body size and a small distance between each body and either the toilet or the door, it is quite conceivable that they were an arm’s length apart.

In her interview with Detective G, Ms A was described by defence counsel as cold, cool and calculating in the video while describing what happened on the date of the alleged incident. The Committee had a different view and that was of a woman who was being taken seriously and having an opportunity to present her version of what happened in a neutral environment. Neither Dr. Abawi, nor an audience was present and she was not being challenged. Rather than “going all over the place” to justify herself as was suggested, the Committee viewed the part of the account that it had available to it as fairly straightforward, given the interruptions because of the detective’s questions interjecting into the narrative. In fact, when the detective at one point asked about Dr. Abawi “grabbing” her arm and asked if there was any force used, Ms A made it clear that

he “guided” her into a bathroom and downplayed any suggestion of aggressiveness on the doctor’s part. There was no embellishment of the account.

Defence counsel questioned Ms A about saying her feet were touching the toilet when speaking with the detective as that would not have fit with what she testified were the dynamics of the situation. When Ms A told the detective “like my feet were up against the toilet”, she was describing the scene and the layout of the bathroom and where she was standing in relation to the police interview room and that sentence was preceded by the words, “Let’s just say...” In the context of what she was describing to the detective, the Committee does not believe her feet were actually against the toilet during the interchange in the bathroom. In her testimony when questioned on this point, she allowed as to how her feet may have touched the toilet when she pushed the doctor away. She never said that at any other time, according to the evidence the Committee had before it. In any case, with a rounded toilet bowl, it is not readily feasible for feet to touch the toilet when someone is standing with their back to the toilet. Ms A always said that her back was to the toilet and the Committee has no reason to question that evidence, especially as that is what Dr. Abawi testified to as well.

Defence counsel questioned Ms A’s testimony, that Dr. Abawi’s hip was leaning on the door and he had his arm across the door. Ms A repeatedly emphasized that this was the doctor’s position towards the end of the encounter, after he “came at her” and “swooped” in to hug and kiss her. The versions Ms A gave were consistent and, although there is evidence that others understood what she was saying in another way, her own versions in the two notes, the Detective G interview and her testimony have all been the same. The Committee does not accept Ms A’s account as more likely to be true because she was consistent in telling it. What is important is that there were not the inconsistencies suggested. The Committee is placing weight on Ms A’s testimony in coming to its conclusions about Ms A’s credibility, as others’ understanding may not have been complete. Ms B acknowledged that she was the one asking Ms A about what happened, and Ms A did not give her an exact play by play of what occurred in the bathroom. In addition, Ms E clearly testified that given the other evidence she was collecting, she was

not particularly concerned with exactly where the pair stood in the bathroom and this evidence implies that Ms E was not as detailed as she could have been about exact positions and at what exact point each of them moved.

Defence counsel argued in closing that Ms B said Ms A reported that she was pinned on the wall or door when Dr. Abawi tried to kiss her. The versions of Ms B and Ms A are different and the Committee agrees. However, the Committee does not agree that it must find Ms B to have been lying in order to prefer Ms A's version to hers. Ms B testified that she did not take notes and she listened as a friend. Ms B was concerned as she was hearing about an assault and she was concerned for her friend's emotional state, and the Committee considers it just as likely that she didn't need the details specifically in order to help her friend. She was there for emotional support. In addition, the Committee heard that the nurses were short staffed on the unit that day and there would probably have been some time pressure that didn't allow for Ms B to go into more detail with Ms A.

The inconsistencies in their versions do not detract from Ms A's version. Ms B's version of what Ms A said does not vary from what Ms B told Ms E and the College investigator. It is notable to the Committee that the two colleagues did have a difference in their testimony. They did not align their testimony. The fact that they did not do this speaks to the integrity of both of them, rather than one of them being a liar, as defence counsel suggested. The Committee finds their differing versions were simply due to Ms B having a different understanding of what Ms A told her in the stairwell that day.

Defence counsel maintains that Ms A would have reported a hug when Ms B asked her if the doctor touched her. However, the Committee finds that Ms B was quite clear that she was asking her friend if Dr. Abawi touched her body, that is, sexual touching of her top or bottom. When she testified that Ms A said the doctor did not touch her body, that is what she was referring to, not arms in a hug on a more "neutral" body part.

Ms B's evidence was particularly instructive for the Committee with regard to the emotional distress Ms A exhibited after the encounter. The complainant's emotional state

after an alleged offence may constitute circumstantial evidence that the offence occurred, according to *R. v Murphy* [1976] S.C.J. No. 87 at p. 7.

Following the incident in the washroom, Ms A sought out her friend Ms B and told her what happened. Ms B's description of Ms A as shaking, tear-stained and "terrified" corroborates what Ms A described as her feelings afterwards. Ms A testified that she thought she was going to be raped. The Committee finds that there is a concordance between what Ms A was reporting and what her friend and colleague observed in the minutes after it happened. Ms A thought she was going to be raped and Ms B observed her as terrified and shaking.

Ms A testified that she made an appointment with her supervisor as soon as she could on the following Monday. Ms C also described how upset Ms A was when she met with her. She was collected although subdued when she arrived, but as she told her story of what happened she started to cry. Ms C had to wait so Ms A could compose herself before she took her to an administrator's office. Ms C did not testify that Ms A said she was "pinned" to the wall as Ms B said. In her recollection, Dr. Abawi had blocked the door and tried to kiss Ms A.

Ms A's demeanour during her testimony augmented her credibility, in the Committee's view. When it was suggested to her that she had been flirting with Dr. Abawi, Ms A exhibited anger and testified that she had always been "strictly professional." The anger and tears intensified when it was suggested to her that she was concerned that Dr. Abawi was going to go out and tell that he'd been in the bathroom with her and was going to say she had been a flirt. Ms A responded crying and with some anger that she was afraid the doctor was going to lose his job and all she wanted was an apology. As it was a small community hospital, she didn't want to tell anyone, as she didn't want it to be talked about. In speaking to her husband about her reluctance to come forward, he encouraged her to do it for her children so they would stand up for themselves too. Ms A was most tearful and upset during the foregoing interchange. Throughout her testimony, Ms A was straightforward, although tearful on more than one occasion, and sometimes with a face

suffused with colour indicating emotion beneath the collected demeanour on the surface. Ms A's emotional expression was congruent with the content of what she was testifying about and it was entirely believable that the time she was most emotional was when she was referring to the encouragement of her husband to come forward for the sake of her children so they would know to stand up for themselves too.

Her colleague, Ms B, and her direct supervisor, Ms C, were very positive about the professional attributes of Ms A. The conscientiousness they testified to was born out by her actions, that is, writing a note to herself about the incident so she would recall it later, and reporting it at the first opportunity. Her integrity was evident in that she didn't allow the detective to ramp up any suggestion of increased aggressiveness on the doctor's part and she also was willing to concede that she may have had her feet against the toilet when she pushed the doctor away and admitted that there were some details she could not recall. Ms B's and her story were different in an important way, and that fact suggests that they didn't collude. This adds weight to Ms A's version and attests to the integrity of both of them. Ms B testified about Ms A's caring manner and this was consistent with Ms A's testimony that she didn't want the doctor to lose his job. Despite the incident, she was concerned with his welfare. The Committee found that the testimony of her colleagues was consistent with what the Committee observed about Ms A.

In addition, Ms B, her direct supervisor Ms C, and another hospital staff person, Ms D, were not aware of Ms A acting in any overtly sexual or flirtatious way with the doctor. Ms B had worked with her for years and would have had many occasions to observe Ms A's actions.

Dr. Abawi in his April 2008 letter said that he and Ms A were standing in the hall and the nearby rooms were busy. This was contradicted by Ms A's evidence that the anesthesiologist was in the OR with the patient and according to the anesthesiologist, the nurses were in the lounge waiting for the doctor. The Committee finds that Ms A's version makes more sense. This was a Saturday in the relevant time period and it is highly unlikely that the OR rooms were busy that day in a small community hospital as

Dr. Abawi stated in his letter of 2008. Ms C confirmed in testimony that there was limited staff in the OR on weekends. The Committee does not believe Dr. Abawi's claim that he invited Ms A to join him in the bathroom. Given her testimony that she didn't know she was entering a bathroom and thinking that the doctor wanted to talk to her about the patient, the Committee accepted her version of events. It was more probable. She was unsuspecting and trusted him, as he was a doctor and she was in a supposedly safe setting. It is unlikely that Ms A would have agreed to enter a bathroom with a doctor, in the Committee's view, especially as the adjacent area was empty. Hospitals also have numerous small rooms, closets, utility rooms, kitchen areas, laundry storage rooms, and conference rooms, and since Ms A had never been to that area before, her version is more believable that she didn't know it was a bathroom.

Defence counsel suggested that Ms A went to the bathroom willingly when Dr. Abawi asked her to and asked what kind of married woman would do that? It was also suggested that Ms A had a motive for presenting her version as she had a big concern that the fact that she had been in the washroom with Dr. Abawi was going to get out in the hospital and she decided to strike first, strike fast, and make the doctor look bad. It was suggested that she was a flirt and concerned with her reputation. The Committee does not find this is the case. There was no reason for Ms A to discuss the incident if that was the case as no one knew they were in the bathroom. Similarly, there was no reason for her to resurrect the issue again a year later, after no response to her complaint. If she were the flirtatious person that was suggested, she would have let the matter go and not objected to what happened to her the way she did. In addition, such actions would be contrary to the professionalism that others describe.

In summary, the Committee found Ms A credible because her version of what happened in the bathroom was clear, consistent and unshaken on cross examination. The Committee found any inconsistencies to be of a minor nature or explainable. Furthermore, the scenario that was painted by defence counsel was implausible. Ms A's emotional state in the immediate period after the encounter as well as two days later was

commensurate with the seriousness of it and augmented her version of what happened. Ms A's demeanour during her testimony added to her believability.

Credibility of Dr. Abawi

In evaluating Dr. Abawi's credibility, the Committee placed the greatest weight on his testimony, the letters he wrote to his Chief of Staff in 2008, and what he told Ms E, the hospital appointed investigator.

The Timeline

Dr. Abawi wrote in his letter of April 8, 2008, that he believed he had met Ms A (sic) about a year prior to the incident. He wrote that she was flirtatious and progressively more so as time went by. It was clearly impossible for Dr. Abawi to have met Ms A a year prior to the date of the alleged incident, as she had been on maternity leave for thirteen months.

In his testimony, Dr. Abawi said that it was impossible for him to remember when the flirtatiousness started, yet he was specific in his letter of April 8, 2008. Although he said in his April 2008 letter that Ms A's flirtatious behaviour was "progressive", he testified that her flirtation had breaks, stopping while on leave and resuming on return. Other times in his testimony, Dr. Abawi said that the flirtatious behaviour started two years, or two and a half years or two years nine months prior to the incident in the bathroom. He told Ms E that he wanted to talk to Ms A two or three months before the date of the alleged incident about her behaviour implying that the behaviour began before his plan to talk to her.

Dr. Abawi testified that the flirtatious behaviour must have happened during the four weeks that she had returned to work, or "by deduction", in 2004, after she started work at the hospital but before she became pregnant and before she went on maternity leave. He said that he had no memory of her being pregnant at all. Dr. Abawi wrote in his 2008 letter that Ms A regularly looked after his surgical patients and those he saw in consultation, but this could not have been true as she hadn't been at work in the preceding

year. He also testified about her being so flirtatious he wanted to speak with her about having an affair and he found her behaviour scintillating and it piqued his interest. If this was true, the Committee would consider it likely that the doctor would have noticed Ms A was pregnant and then missing for the twelve or thirteen months she was away on maternity leave, as he had a particular reason for noticing her. Dr. Abawi's contradictions in this area are significant, as it suggests he didn't see her as often as he said he did and did not particularly notice her since he didn't know she had been pregnant or off work on maternity leave.

Although he stated in his letter that he wanted to discuss the alleged behaviour if an opportunity arose, he waited either years or a few weeks to do so, according to his account at the hearing. The year timeline in the April 2008 letter was not possible because of her being away on maternity leave. Dr. Abawi stated that "it is impossible for me to remember when it happened." The Committee did not find Dr. Abawi credible with regard to his timeline of when he perceived Ms A as flirtatious and when he decided to talk to her.

The Alleged Flirtatious Behaviour

In his letter of April 2008, Dr. Abawi claimed that he chose to ignore Ms A's flirtatious behaviour and address it directly if an appropriate opportunity arose. He told Ms E the same thing. However, in testimony, Dr. Abawi recanted this statement and said that he did want to talk to Ms A about her flirtatious behavior, not to confront her to have it stop, but because he wanted to have an affair with her.

When he wrote in the letter that "unfortunately" Ms A acted toward him in a manner that was excessively friendly and flirtatious, he was not being honest. He testified that he found her behaviour scintillating and it piqued his interest and the statement he made in his letter is not true.

By Dr. Abawi's account in the April 2008 letter to his Chief of Staff, Ms A was excessively friendly and flirtatious and her behaviour in this regard progressed to be

much more flirtatious and suggestive as time went by. He wrote that her behaviour included extending her tongue and licking her lips, as well as spreading her legs and touching her groin in front of him. Ms E testified that he told her the same thing and used the words “groin” and touching “down there”, suggesting her groin area. However, Dr. Abawi contended that he did not use those words and Ms E’s notes were wrong, even though he used the word “groin” in his letter of 2008. Dr. Abawi was inconsistent on the point of what he told Ms E. In addition, he testified that what he told Ms E “was true then and was true now” and this assertion was opposite to the foregoing denial about what he told her.

In his examination in chief, Dr. Abawi testified that he didn’t mean to imply that Ms A was touching her sexual parts, but instead he said she rubbed the inside of her thigh. He insisted in cross examination that he did not exaggerate for the purposes of making anyone believe his version of events. Dr. Abawi testified that “it was just a matter of vocabulary” although he also agreed that he wanted to paint a certain picture for Dr. L, the Chief of Staff, and for Ms E.

The Committee finds that Dr. Abawi wanted to paint a picture of a woman engaging in sexually explicit behaviour and finds it was not simply a vocabulary problem. Dr. Abawi is a surgeon. He knows the proper words for parts of the anatomy, and although English is not his first language, he completed medical school in Canada and has practised here for almost two decades.

Dr. Abawi maintained that Ms A’s flirtatiousness was “unlike anything he has ever seen before in the workplace.” He also testified that he can’t recall how often her flirtatious and sexually explicit behaviour occurred; it may have been two or ten to twelve times, although he did recall two times specifically.

In one instance, Dr. Abawi said Ms A was sitting beside him at the counter at the nursing station talking about patient care when she touched her groin. He said that there was no one present at the nursing station when she did this. He testified that on another occasion,

Ms A was kneeling with her legs spread apart and touching her groin when she was retrieving a chart from a lower drawer in a filing cabinet across the desk from him. However, a follow-up question clarified that he did not mean that her knees were on the floor, and the Committee concluded that she was squatting or in a semi-sit position as she was reaching into the bottom drawer of a filing cabinet for a patient's chart. In either case, the Committee had difficulty ascertaining how Ms A would have easily been able to rub her inner thigh, while retrieving a chart in either position. The Committee also had difficulty envisioning the behavior, which was the worst Dr. Abawi had ever seen in the workplace, taking place at a busy nursing station that was described by witnesses as a busy hub on the nursing unit.

Three staff of the hospital testified about Ms A's professionalism. They had an opportunity to observe her behaviour in the work-place and two staff were in a position to receive complaints about Ms A's conduct. No one ever complained about Ms A's behaviour.

At another time, Dr. Abawi said that what he observed was merely a perception and he "misunderstood" her and it may not have happened as he thought. In the Committee's view, the inconsistencies in these aspects of his evidence are irreconcilable.

The Committee concludes that Ms A did not engage in any flirtatious or sexually explicit behaviour at any time. Dr. Abawi's vagueness and inconsistencies about the timeline and about the most explicit sexual acts that he said she had engaged in, "unlike anything he had seen before in the workplace," led the Committee to find that he was not believable or telling the truth. When Dr. Abawi discovered that Ms A had been away from work in the timeline of his letter, he then changed his story and testified about not being able to remember, when he had been quite specific in his letter of 2008 and when he spoke with Ms E prior to learning of Ms A's absence. He admitted that the premise of the letter of 2008, "I was not harassing her, she was harassing me," was a lie. Dr. Abawi described Ms A as friendly. Ms C, her supervisor, described her as friendly and "bubbly." The Committee considers it more likely that Dr. Abawi exaggerated Ms A's friendly nature in

order to deflect blame from himself. Even he suggested that he may have misunderstood her and what he observed was merely his perception.

Dr. Abawi wrote a letter on September 20, 2006, for his previous Chief of Staff. In that letter, he claimed that it was absolutely not true that he tried to kiss Ms A on the mouth or ask her to keep any secrets. He apologized to Ms A for putting her in a difficult situation and stated that nothing like this will happen again. It is notable to the Committee that he apologized in the month after the incident, even though he claimed that he was falsely accused. In testimony, he justified this by saying that he hoped the matter would “just stay quiet” and he didn’t want to make it complicated.

Dr. Abawi testified that when he talked to Dr. K, he did tell him that nothing sexual occurred, although he claimed that he did tell him that he was responding to behaviour that he perceived to be flirtatious and suggestive. Nonetheless, he said that he did not tell Dr. K any details of the flirtation, or that it was progressively suggestive over the course of a year. He also admitted that he didn’t tell Dr. K that he invited Ms A into the bathroom to start an affair. The Committee did not put a lot of weight on what Dr. Abawi said he told Dr. K and when. There were some inconsistencies in this area between what he told Ms E and what he said at the hearing.

In summary, Dr. Abawi was inconsistent about the exact nature of Ms A’s flirtatiousness, the timeline involved, and his intentions in talking to Ms A. The Committee considered that an honest person would not have been mistaken about all of these issues. In discussions with Dr. K, the first Chief of Staff, he claimed he misperceived Ms A’s behaviour. He actually wrote an apology of sorts in the month following the incident. When he met with Ms E, he said the behaviour was explicit and unmistakable and he wanted to confront Ms A. He withdrew from this account, however, in examination in chief and had a different version. He characterized Ms A’s flirtatiousness differently and also claimed that his intention was not to confront her about stopping it, but to see if she was interested in having an affair, which he was prepared to start then and there. He acknowledged in cross examination, with respect to his changing versions, “different

time, different circumstances and different story.” The Committee concludes that Dr. Abawi was careless with the truth. In coming to this conclusion, the Committee finds that Dr. Abawi was not credible.

Issue 1

Did Dr. Abawi engage in conduct that was disgraceful, dishonourable, or unprofessional and/or engage in conduct unbecoming a physician, by making unwanted and inappropriate sexual advances and remarks and by hugging and trying to kiss Ms A on the lips?

Dr. Abawi testified that he asked Ms A to join him in the bathroom and she agreed, and because she agreed, he thought she was interested in having an affair. Ms A’s version was different. She said she had gone out the main door to the OR corridor and was heading for the elevator when Dr. Abawi took her arm and guided her to the bathroom. She turned her head to see who was there and she testified that she didn’t know she was being guided to a bathroom, as she had never been in this area of the hospital before. She testified that she turned her head to see who took her arm and it happened quickly. The Committee considers it entirely possible that she didn’t see the bathroom sign and therefore didn’t realize where she was heading, given the short distance.

Dr. Abawi testified that his intention was to start an affair, not to confront Ms A about her flirtatious behaviour. However, when he was asked about why he needed to speak to Ms A in the bathroom, as the waiting area for the OR was quiet the day of the incident as it was a Saturday, Dr. Abawi testified that he was ready to start the affair right there and then in the bathroom if she agreed to it, as he thought she was interested in having an affair with him.

Dr. Abawi testified that he couldn’t ask her out for coffee as it was a small town and he couldn’t have a public affair. He testified that he thought she wanted to have a secret, romantic, sexual relationship with him and he was wrong about that. However, the Committee finds that no flirtatious, or overtly sexual, behaviour on the part of Ms A

occurred at all. The Committee believes Dr. Abawi when he said that he wanted to start an affair “right then and there” in the bathroom. If his intentions were just to start an affair, he could have talked to Ms A in the empty waiting area on the date of the alleged incident. Because he took her into the washroom to start an affair, the Committee finds it more likely that he did hug and kiss her that day. Contributing to the foregoing analysis leading to this finding was Dr. Abawi’s lack of credibility. Ms A’s account was more believable.

In conclusion, the Committee finds, on the balance of probabilities, based on clear, cogent and convincing evidence, that Dr. Abawi took Ms A into the bathroom on the date of the incident, and made unwanted and inappropriate sexual advances and remarks, and, in doing so, he engaged in behaviour that would be regarded by members as disgraceful, dishonourable and unprofessional.

Issue 2:

Did Dr. Abawi engaged in conduct that was disgraceful, dishonourable and unprofessional and/or engage in conduct unbecoming a physician by confining Ms A without her consent in the hospital bathroom?

In looking at the issue of whether Dr. Abawi confined Ms A without her consent at her place of work, the Committee found that Ms A was terrified as she said. She had entered the washroom unwittingly. Dr. Abawi tried to hug and kiss her twice and then leaned with his hip against the door and his arm raised and resting on the door and wall. In the Committee’s view, the fact that Dr. Abawi’s body was resting on the door and blocking the exit is psychologically intimidating and an issue of power and control. Ms A’s exit was restricted and Dr. Abawi was controlling the situation. However, the Committee finds that when Ms A stated she was leaving, Dr. Abawi did not stand in her way. Although the confinement was not prolonged, it nevertheless took place. Given Dr. Abawi’s conduct during the encounter, the Committee finds that Dr. Abawi did engage in conduct that was disgraceful, dishonourable and unprofessional by confining Ms A without her consent.

The Committee did not look at confinement in a criminal sense but rather, in the context of the encounter, his shocking and unwanted advances, his physical blocking of the door and the resulting psychological intimidation.

Conduct Unbecoming

The Committee was asked to make findings on the allegation of disgraceful, dishonourable or unprofessional conduct, or, in the alternative, on the finding that Dr. Abawi engaged in conduct unbecoming a physician. Had it been requested, the Committee would have made findings on the allegation of conduct unbecoming on issue 1 and issue 2 as well, as the evidence supported these findings.

CONCLUSION

It was unclear to the Committee what motivated Dr. Abawi to do what he did. Was it an issue of power and control? Was he infatuated with Ms A, or did he misread innocent behaviour? The Committee found Ms A credible and finds she was testifying truthfully, including when she said Dr. Abawi came to her nursing unit that day and was upset because his OR time was being delayed. The Committee notes that his anger occurred a very short time before the unwanted sexual advances in the washroom. Defence counsel claimed that the Committee would have to believe Dr. Abawi was delusional, or had something mentally wrong with him, to do what he did as it doesn't make sense. The Committee agrees, but finds that the unwanted sexual advances happened nonetheless. Precisely because it doesn't make sense for Dr. Abawi to risk his career in this way, the risk he poses for the future is uncertain. In addition, the context is important in risk assessment. This incident happened in a bathroom at a work place with an unsuspecting nurse. Given the context, the risk Dr. Abawi poses for the future needs to be factored into penalty submissions.

The Committee directs that the Hearings Office schedule a penalty hearing pertaining to the findings made at the earliest possible date.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Walid Abawi, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name and any information that could disclose the identity of the subject of the alleged incident under subsection 45(3) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the Regulated Health Professions Act, 1991.

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

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

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

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

Indexed as: Abawi, W. (Re)

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. WALID ABAWI

PANEL MEMBERS:

DR. P. CHART (CHAIR)
D. GIAMPIETRI
DR. B. LENT
DR. E. ATTIA (Ph.D.)
DR. C. CLAPPERTON

Penalty Hearing Date: February 10, 2014
Penalty Decision Date: February 10, 2014
Release of Written Reasons: April 8, 2014

PUBLICATION BAN

PENALTY AND REASONS FOR PENALTY

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario delivered its written decision and reasons on finding in this matter on September 12, 2013, and found that Dr. Walid Abawi has committed professional misconduct in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee heard evidence and submissions on penalty and costs on February 10, 2014, and delivered its penalty and costs order with written reasons to follow.

EVIDENCE AND SUBMISSIONS ON PENALTY

The Committee’s Decision of September 12, 2013

Dr. Abawi is a General Surgeon at a community hospital and the complainant, Ms A, was a nurse at the same hospital. Dr. Abawi testified that Ms A had been flirting with him for a period of time. The Committee did not believe Dr. Abawi’s testimony and found that he was “careless with the truth”. In particular, the Committee found that Ms A had not been flirting with Dr. Abawi and accepted her version of events. Ms A testified that she assisted Dr. Abawi in transporting a patient to the operating room on a Saturday in 2006, when there was minimal staff in that area. As she left the operating room and walked down the hall, Dr. Abawi took Ms A’s left elbow and guided her into a bathroom. While there, Dr. Abawi made unwanted and inappropriate sexual advances in trying to hug and kiss her. He made inappropriate remarks in asking her if she was interested in having an affair. The Committee found that this conduct was behaviour that would be regarded by members as disgraceful, dishonourable and unprofessional.

The Committee found that when Dr. Abawi tried to hug and kiss Ms A, he leaned with his hip against the door and his arm raised and resting on the door and wall. Ms A’s exit was blocked until she said she was leaving, at which time Dr. Abawi said he was leaving first and he exited the bathroom. Although she was confined for only a short period, Ms A was nonetheless confined without her consent. The short confinement and Dr. Abawi’s

body blocking the door constituted psychological intimidation in the Committee's view and was further behaviour that would be regarded by members as disgraceful, dishonourable and/or unprofessional.

Further Evidence on Penalty

On the penalty hearing, Dr. Abawi filed a number of character letters of support from his current workplace, which attests to his professional manner and collegiality. Some of the letters are from nurses. Those who wrote the letters indicate that they had read the Committee's decision and knew of his misconduct, which gave more credence to their reports of his appropriate behaviour.

Joint Submission on Penalty

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty, including a plan for management of risk issues and a costs order. The proposed order included a suspension of Dr. Abawi's certificate of registration for a period of four (4) months, monitoring for a period of eighteen (18) months, education, a reprimand and costs.

Counsel for the College presented a Book of Authorities containing a number of authorities in order to show the range of penalties in similar cases.

DECISION AND REASONS ON PENALTY

The Committee carefully considered the joint submission of the parties and accepted it. In doing so, the Committee considered the context and circumstances of the misconduct, the aggravating and mitigating factors, the relevant penalty principles, the character letters of support, the submissions and the case law presented by the parties and the legal principles regarding joint submissions.

Although the Committee has the discretion to accept or reject a joint submission on penalty, the case law is clear that the Committee should accept a joint submission, unless to do so would bring the administration of justice into disrepute and be contrary to the

public interest. The Committee considered that the proposed joint submission was an appropriate penalty in all of the circumstances.

The Committee considered the aggravating and mitigating factors. Dr. Abawi's actions were highly inappropriate, intimidating, and took place in a hospital setting. Ms A's testimony summed the incident well: "Never in a million years would I ever have thought that I would be pulled into a bathroom and sexually assaulted at my own place of employment by somebody who I'm supposed to trust." Ms A testified how shocked and scared she was. In considering the penalty proposed, the Committee considered several issues, including those elucidated above by Ms A, regarding the context of Dr. Abawi's misconduct and how his behaviour affected her.

The Committee was unclear about Dr. Abawi's motivation for the misconduct. No prior history of similar behaviour was present, yet his actions were very aggressive, intimidating and he blamed the complainant for them. Because of the circumstances and the power and control inherent in the incident, the Committee paid particular attention to any residual risk the doctor may pose. The nature of the incident and the uncertainty regarding motivation were aggravating factors.

It is notable that no past concerns of a similar nature concerning Dr. Abawi have come to the attention of the College.

The Committee based its consideration of the penalty on several guiding principles. Chief among them is protection of the public and the need to uphold the honour and reputation of the profession and the confidence of the public in the College's ability to regulate itself. The penalty should serve as a general deterrent to the profession and a specific deterrent to the doctor himself. The penalty should be proportionate to the misconduct and express the profession's denunciation of the misconduct. Rehabilitation of the member is also a consideration.

The Committee considers that the significant period of suspension of Dr. Abawi's certificate of registration and the significant monitoring period will serve as a specific deterrent to Dr. Abawi. The penalty will also serve as a general deterrent to others within the profession as an indication of what they may face if they engage in similar behaviour.

The public will be protected in that Dr. Abawi is prevented from practicing for a period of time and will be monitored for a lengthy period of time. The Committee reviewed similar cases involving physicians who engaged in unprofessional and inappropriate sexual behaviour in the workplace and determined that the suspension of four months is in line with previous cases.

The reprimand part of the joint submission is appropriate and expresses the Committee's denunciation of Dr. Abawi's behaviour on behalf of the profession.

The education and monitoring part of the joint submission is also appropriate. The completion of the individualized instruction in professionalism and medical ethics should assist in Dr. Abawi's rehabilitation. Any residual risk issues will be addressed by a period of monitoring at his workplace to ensure that he maintains behaviour that is appropriate.

Costs in the amount of \$26,760.00 are appropriate and reflect the fact that there was lengthy hearing required by Dr. Abawi and he was entirely unsuccessful at the hearing.

ORDER

On February 10, 2014, the Discipline Committee ordered and directed that:

1. Dr. Abawi appear before the panel to be reprimanded.
2. the Registrar suspend Dr. Abawi's certificate of registration for a period of four (4) months, to commence at 12:00 a.m. February 11, 2014.

3. the Registrar impose the following terms, conditions and limitations on Dr. Abawi's certificate of registration:
 - (i) Dr. Abawi shall successfully complete, at his own expense, individualized instruction in professionalism and medical ethics with a College approved instructor within twelve (12) months of this Order. The instruction is to be on a one-to-one basis, for a minimum of five (5), two (2) hour sessions;
 - (ii) Dr. Abawi shall be subject to workplace monitoring by a regulated health professional, approved by the College, who executes an undertaking with the College in the form attached as Appendix "A" (the "Practice Monitor"). Monitoring shall continue for a minimum period of eighteen (18) months at each of Dr. Abawi's practice locations and shall cease at that time unless the College in its sole discretion, determines that Dr. Abawi's conduct in the workplace is unsatisfactory. If it is determined that his conduct in the workplace is unsatisfactory, the monitoring shall continue for a minimum period of an additional six months at which time a further determination will be made by the College, in its sole discretion, if further monitoring is necessary, and if so, Dr. Abawi shall be subject to further monitoring until his conduct is deemed satisfactory by the College;
 - (iii) The Practice Monitor(s) shall work at the same location as Dr. Abawi and shall be required to, among other things:
 - (a) provide written reports to the College on a monthly basis. Such reports are to include information regarding Dr. Abawi's conduct, behaviour, and professionalism including information provided to the Practice Monitor by nurses, medical staff and/or any other staff working directly or indirectly with Dr. Abawi; and
 - (b) provide immediate reporting to the College if the Practice Monitor has any concerns about Dr. Abawi's conduct, behaviour or professionalism or forms the view that patients or people in the workplace may be at

risk of harm or forms the view that he is not in compliance with the panel's Order;

- (iv) Dr. Abawi shall provide an executed Appendix "A" from a College approved Practice Monitor no later than thirty (30) days before he resumes practice following his suspension. If the person who has given an undertaking in Appendix "A" is unable or unwilling to continue to fulfill its terms, or the College determines the Practice Monitor is no longer acceptable, Dr. Abawi shall, within twenty (20) days of receiving notice of same, obtain an executed undertaking in the same form from a similarly qualified person who is acceptable to the College and ensure that it is delivered to the College within that time. If Dr. Abawi is unable to obtain a Practice Monitor on the terms set out in this Order, he shall cease practicing medicine until such time as he has obtained a Practice Monitor acceptable to the College on the terms set out above;
- (v) Dr. Abawi shall provide written notice to the College at least thirty (30) days before seeking privileges, employment or any other position, at any hospital, independent health facility, out-of-hospital premise, or any other location. Dr. Abawi shall inform the College within ten (10) days of the date he receives notice that he has been granted such privileges, employment or position. Dr. Abawi shall ensure that he has obtained an undertaking in the form of Appendix "A" from a College-approved regulated health professional who works at that location and shall provide same to the College before commencing work at such location;
- (vi) With respect to Dr. Abawi's locum coverage at Temiskaming Hospital, Dr. Abawi shall provide the Chief of Staff and the Chief of Surgery with copies of the panel's Decision and Reasons for Decision dated September 12, 2013 and a copy this Order and provide proof of same within fifteen (15) days of the date of this Order. Dr. Abawi shall advise the Chief of Staff and the Chief of Surgery that the College will be making inquiries on a quarterly basis with

respect to Dr. Abawi's conduct, behaviour and professionalism at Temiskaming Hospital.

(vii) Dr. Abawi shall be responsible for any and all costs associated with implementing the terms of this Order.

4. Dr. Abawi pay the College costs in the amount of \$26,760.00 within ninety (90) days from the date of this Order.

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