ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. McInnis,* 2024 ONPSDT 3
Date: January 26, 2024
Tribunal File Nos.: 21-013 and 21-014

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

James Edward Roland McInnis

Registrant

FINDING REASONS

Heard: October 3-6, 10-13, 17-20, 23-26, and November 6, 2023, by videoconference

Panel:

Jennifer Scott (panel chair)
Marie-Pierre Carpentier (physician)
Veronica Mohr (physician)
Peter Pielsticker (public)
Linda Robbins (public)

Appearances:
Emily Graham and Simmy Dhamrait-Sohi, for the College
Seth Weinstein and Christopher Lutes, for the registrant

RESTRICTION ON PUBLICATION

Pursuant to Rule 2.2.2 of the OPSDT Rules of Procedure and ss. 45-47 of the Health Professions Procedural Code, no one shall publish or broadcast the names of patients or any information that could identify patients or disclose patients' personal health information or health records referred to at a hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this restriction.

INTRODUCTION

[1] This case involves allegations of sexual abuse and/or disgraceful, dishonourable or unprofessional conduct with Patient A, Patient E, Patient F and Dr. McInnis's practice monitor, Nurse C. It also involves allegations that Dr. McInnis failed to maintain the standard of practice of the profession and/or is incompetent in his prescribing, dispensing and storing of medications and with respect to his care and treatment of patients. Finally, it includes an allegation that Dr. McInnis attempted to interfere with the College's investigation.

[2] The allegations of sexual abuse and/or disgraceful, dishonourable or unprofessional conduct relate to a 19-month period. During this time, the College alleges that Dr. McInnis had sexual relationships with Patient E, Ms. X (the fiancée of Patient F), Nurse C and Patient A. The College alleges the relationship with Patient E took place in March/April 2018, with Ms. X in June 2018, with Nurse C in March/April 2019 and with Patient A in April/May 2019.

[3] Dr. McInnis denies that he engaged in sexual abuse and/or disgraceful, dishonourable or unprofessional conduct and denies that he attempted to interfere with the College's investigation. He admits that he failed to maintain the standard of practice.

[4] We find Dr. McInnis sexually abused Patient A and Nurse C, and engaged in disgraceful, dishonourable or unprofessional conduct with Patient A, Patient E, Patient F and Nurse C.

[5] Allegations of sexual abuse and disgraceful, dishonourable or unprofessional conduct were also made regarding Patient B, who testified at the hearing. Just before final argument, the College advised that it was not proceeding with allegations relating to this patient. In light of the College's position, we have not considered this patient's evidence in this decision. We appreciate Patient B's attendance at the hearing and her participation in the Tribunal's process.

BACKGROUND

[6] Dr. McInnis is a family physician who received his certificate of registration in 2006. At the time relevant to this case, he practised at two clinics: one in Wasaga Beach and one in Angus, Ontario. He maintained medical records for his patients electronically using electronic medical records software (EMR).

[7] Dr. McInnis has a prior discipline history in 2008 and 2013. Since 2011, he is required to have a practice monitor present when he sees female patients.

[8] By decision of the Inquiries, Complaints and Reports Committee, Dr. McInnis closed his practice in November 2019.

The Hearing

[9] The hearing took place over the course of 16 days in October 2023 and final argument was heard on November 6, 2023.

[10] The College called Patient A, Patient B, Patient E, Patient F, Ms. X and Nurse C as witnesses. It also called Jessica Rogers, Patient G (C.A.), April Kuipers, Detective Sergeant James Hargreaves, Detective Melissa Kolodziechuk and Ms. Y.

[11] The College also called Dr. Karen Ferguson, who was qualified as an expert to give opinion evidence on standards of practice and competencies in family medicine, and Tom Musters, who was qualified as an expert in cell phone forensic imaging and analysis. Dr. McInnis did not oppose the qualifications of these two expert witnesses.

[12] Dr. McInnis testified at the hearing and called Tanyia North, A.B., Annette Bourassa, Ceilidh McInnis and Lorne Ellison as witnesses.

Evidence of Dr. Ferguson

[13] Dr. Ferguson gave evidence about Dr. McInnis's practice of prescribing medication for office use, his treatment of 20 patients and his treatment of Patient A. She also gave evidence about Patient B's treatment, which we have not considered given the College's withdrawal of the allegations in relation to Patient B.

<u>Office Use Medications</u>

[14] Dr. Ferguson gave the opinion that Dr. McInnis's practice with respect to prescribing medications for office use, including in relation to his record-keeping, storage and indications for the type and quantity of medications prescribed, did not meet the standard of practice of the profession. With respect to Dr. McInnis's prescribing and dispensing of controlled substances, Dr. Ferguson said Dr. McInnis did not store the medications securely and kept one medication (oxycocet) in a bottle labelled with a different medication name (diazepam) which could lead to medication error. She said Dr.

McInnis did not keep an audit trail regarding patient identifiers, dates and quantities of controlled substances dispensed to ensure there was no misuse or diversion.

[15] Dr. Ferguson said Dr. McInnis's practice of prescribing medications for office use, including his record-keeping, storage and indications for the type and quantity of medications prescribed displayed a lack of knowledge, skill and judgment. Dr. Ferguson gave the opinion that Dr. McInnis did not ensure that adequate measures were taken for the safe and appropriate dispensing of these medications. The lack of adequate safety measures could lead to medication interactions or dosage errors as well as possible misuse or diversion of the controlled substances. Dr. Ferguson was particularly concerned about the ongoing pattern with a large number of prescriptions written for office use over 2.5 years.

[16] Dr. Ferguson gave the opinion that Dr. McInnis's clinical practice, behaviour or conduct was likely to expose his patients to harm or injury. He dispensed opioids and benzodiazepines on a regular basis over at least 2.5 years without storing the medications securely. He did not meet basic documentation requirements such as keeping an audit trail of the controlled medications that he dispensed. In the absence of entering the medications he was dispensing into his EMR, it is possible that potential interactions would be missed. She said there is a significant risk of medication error inherent in this pattern that could expose patients to harm, as well as a risk of diversion or misuse of the controlled substances.

Twenty Patients

[17] Dr. Ferguson reviewed the charts of 20 patients. She gave the opinion that the care Dr. McInnis provided to seven patients met the standard of practice of the profession. His care of 13 patients did not meet the standard of practice. The concerns expressed by Dr. Ferguson were mainly regarding his prescribing of controlled substances, including opioids. Dr. Ferguson said Dr. McInnis displayed a lack of knowledge, skill and judgment in the 13 charts.

[18] Dr. Ferguson gave the opinion that in seven of the 20 charts reviewed, Dr. McInnis's clinical practice, behaviour or conduct was likely to expose his patients to harm or injury. There was no evidence of risk of harm in the remaining charts.

Patient A

[19] Dr. Ferguson reviewed the patient chart for Patient A. Dr. Ferguson gave the opinion that the care provided by Dr. McInnis to Patient A did not meet the standard of practice. He did not demonstrate appropriate caution regarding his prescriptions for controlled substances. Given that this patient had active substance abuse issues, he should have been more cautious when he initiated and continued to prescribe benzodiazepines and opioids. She stated the standard of practice is to avoid prescribing opioids in this situation. He did not monitor with urine drug screens until four months after he initiated the opioids. When he was confronted repeatedly with evidence that Patient A was abusing street drugs, he did not taper the opioids for several months. When Patient A presented with an altered level of consciousness, it was not appropriate or safe to try to send her to a shelter. Dr. Ferguson said Dr. McInnis should have sent her to the emergency department.

[20] Dr. Ferguson gave the opinion that Dr. McInnis's care of Patient A lacked judgment as was demonstrated by his ongoing prescriptions for opioids and benzodiazepines to a patient with an active substance abuse disorder. The degree of this deficit was significant.

[21] Dr. Ferguson said Dr. McInnis's clinical practice, behaviour or conduct was likely to expose Patient A to harm or injury. His prescriptions for benzodiazepines and opioids may have contributed to the patient's overdose and ongoing substance abuse. His lack of recognition that she should have been sent to the hospital when she was somnolent and confused could have led to her overdose being more harmful or even lethal if she had not gone to the emergency department herself.

Dr. McInnis's Admissions

[22] During his evidence, Dr. McInnis admitted to many of Dr. Ferguson's findings regarding his failure to meet the standard of care of the profession. At the request of the Tribunal, Dr. McInnis provided his admissions in writing. They are reproduced below.

> Patient A
>
> With respect to Dr. Ferguson's report on Patient A, Dr. McInnis acknowledges that his conduct fell below the standard of care in the following ways:

a. The point of care urine screening that was administered to Patient A ought to have been documented in her chart;

b. He ought to have cut off Patient A's narcotics prescriptions at an earlier sign of misuse; and

c. For the July 16, 2019 patient encounter where Patient A presented to the clinic, Dr. McInnis ought to have written his own note instead of relying on the note written by his practice monitor.

Office Use Medications

Dr. McInnis admits that he failed to maintain the standard of practice or was incompetent in prescribing, storing, or dispensing medication prescribed for "office use." He agrees that he ought not to have prescribed medications for office use, and that it would have been a better practice to have written prescriptions for these medications and have patients fill them at a pharmacy. In particular, Dr. McInnis acknowledges that his conduct fell below the standard of practice in the following ways:

a. Dr. McInnis failed to keep an audit trail regarding patient identifiers, dates, and quantities of controlled substances dispensed, and that failing to do so fell below the standard of practice. He agrees that he should have kept a master log tracking to whom all office use medications were provided;

b. His practice for storing controlled substances that were prescribed for office use did not meet College standards, which require that physicians adhere to the same storage standards applied to pharmacists;

c. The single identified instance where Dr. McInnis stored oxycocet in a bottle labelled Diazepam did not meet the College's standards for medication storage and created the risk of misuse; and

d. Not affixing the opioid warning label or providing the required informational hand-out to patients to whom he dispensed office use opioids did not meet the standard of practice.

20 Patient Chart Review

With respect to Dr. Ferguson's report reviewing the charts of 20 patients who were prescribed drugs registered on the Narcotics Monitoring System, Dr. McInnis acknowledges that his care of the patients fell below the standard of practice in the following ways:

a. Dr. McInnis acknowledges that he failed to document discussions regarding opioid tolerance, adverse effects or his assessment of opioid risk in patients who had not previously been prescribed opioids. Dr. McInnis further acknowledges that it would have been best practice to have used narcotic treatment contracts with all patients to whom chronic opioids were prescribed;

b. Dr. McInnis acknowledges that there were a small number of patients he failed to follow up with as frequently as he should have after prescribing a lengthy course of opioids. It is standard practice to monitor patients taking high doses of opioids more frequently than once a year;

c. Dr. McInnis acknowledges that he ought to have better documented the reason why he was prescribing opioids to patients, and that in some cases he did not document them at all;

d. Dr. McInnis acknowledges that he ought to have better documented his ongoing assessment of patients' functional status, and that in some cases he did not document these assessments at all;

e. Dr. McInnis acknowledges that he rarely used urine screening and that he ought to have used it more with some of the patients who demonstrated features or history of misuse; and

f. With respect to the two patients to whom he prescribed Suboxone, Dr. McInnis acknowledges that he did not follow current recommendations for Suboxone prescribing which include regular urine drug screens and regular encounters.

Findings on Standard of Practice

[23] Dr. McInnis did not contest the expertise of Dr. Ferguson and admitted many of her findings during his testimony. He did not call any expert evidence to contradict her evidence. As such, there is no opposing evidence for us to consider.

[24] While Dr. McInnis's written admissions are fewer than his admissions during his evidence, he has admitted that he breached the standard of practice of the profession in his prescribing, dispensing and storing of office use medications, in his care of some of the patients whose charts were reviewed by Dr. Ferguson and in his care of Patient A.

[25] We accept the evidence of Dr. Ferguson and find Dr. McInnis's practice with respect to his prescribing office use medications, including his record-keeping, storage

and dispensing, did not meet the standard of practice and likely exposed his patients to harm and injury.

[26] We find Dr. McInnis's care did not meet the standard of practice in 13 charts reviewed by Dr. Ferguson and likely exposed his patients to harm or injury in seven.

[27] We find Dr. McInnis breached the standard of practice in his care of Patient A and likely exposed her to harm or injury.

Allegations of Professional Misconduct in Dispute

[28] Dr. McInnis disputes the following allegations of professional misconduct:

a. That he engaged in sexual abuse and/or disgraceful, dishonourable or unprofessional conduct with Patient A.

b. That he engaged in sexual abuse and/or disgraceful, dishonourable or unprofessional conduct with his practice monitor, Nurse C.

c. That he engaged in disgraceful, dishonourable or unprofessional conduct towards Patient E.

d. That he engaged in disgraceful, dishonourable or unprofessional conduct towards Patient F.

e. That he engaged in disgraceful, dishonourable or unprofessional conduct by having or attempting to have patients provide inaccurate and/or untruthful information to the College during its investigation.

ANALYSIS

Legal Framework

Burden of Proof

[29] The burden of proof is on the College to prove the allegations of misconduct. The standard of proof is the civil standard. This means the College must prove the allegations on a balance of probabilities based on clear, convincing, and cogent evidence. The seriousness of the alleged conduct and the consequences of a finding do not alter the standard of proof: *F.H. v. McDougall*, 2008 SCC 53 at paras. 40 and 45-49.

Sexual Abuse

[30] "Sexual abuse" of a patient is defined in s. 1(3) of the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991,* SO 1991, c. 18 (Code):

> (3) In this Code,
>
> "sexual abuse" of a patient by a member means,
>
> (a) sexual intercourse or other forms of physical sexual relations between the member and the patient,
>
> (b) touching, of a sexual nature, of the patient by the member, or
>
> (c) behaviour or remarks of a sexual nature by the member towards the patient.
>
> (4) For the purposes of subsection (3),
>
> "sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

Disgraceful, Dishonourable or Unprofessional Conduct

[31] Under s. 1(1)33 of O. Reg. 856/93 under the *Medicine Act, 1991*, SO 1991, c. 30, an act of professional misconduct includes an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by registrants as disgraceful, dishonourable or unprofessional. As noted in *College of Physicians and Surgeons of Ontario v. Rabiu*, 2020 ONCPSD 15, disgraceful, dishonourable or unprofessional conduct is often referred to as a broad catch-all provision and is intended to capture any improper misconduct that is not caught by the wording of the specific definitions of professional misconduct. The conduct does not have to be dishonest or immoral to fall within the definition. A serious or persistent disregard for one's professional obligations is sufficient. (p. 26)

Credibility and Reliability

[32] Credibility refers to a witness's sincerity and willingness to tell what they believe to be the truth. Reliability, on the other hand, relates to the ability of the witness to

accurately observe, recall, and recount the events in question. Credibility is not a proxy for reliability; a credible witness may give unreliable evidence.

[33] While there is no exhaustive list of factors for assessing credibility, we are entitled to consider issues such as a person's bias, motivation to lie or other factors that might lead a witness to deliberately distort the truth: *College of Physicians and Surgeons of Ontario v. Aboujamra*, 2022 ONPSDT 32 at para. 42; upheld 2023 ONSC 3344. A witness's demeanour may be a factor to consider; however, demeanour alone is a notoriously unreliable predictor of the accuracy of evidence given by a witness: *Law Society of Upper Canada v. Neinstein*, 2010 ONCA 193 at para. 66.

[34] When making credibility assessments, we must consider the totality of the evidence. Where there are inconsistencies in the evidence, we must assess their impact on credibility. Inconsistencies in the witness's evidence on minor matters of detail are to be expected and do not generally affect the credibility of the witness. "When inconsistencies are of a material nature about which an honest witness is unlikely to be mistaken, such inconsistencies may demonstrate carelessness with the truth.": *College of Physicians and Surgeons of Ontario v. Taliano*, 2020 ONCPSD 42 at para. 11.

[35] Where the burden of proof in a case is the civil burden, finding one party credible on important issues may be determinative of the result because believing one party means the other party is not believed. This may be especially true where the other party denies the allegations in their entirety: *McDougall* at para. 86.

[36] Finally, we must be careful in sexual abuse cases to not allow stereotypical and discriminatory thinking to influence our credibility and reliability assessments. This includes believing that complainants respond to sexual abuse in a certain way. Some complainants may report the abuse right away and others may not. Some may terminate all contact with the alleged abuser, others may not. The law is clear that there is no one way that complainants respond to sexual abuse and their credibility cannot be assessed by applying a standard of behaviour that does not exist: *R. v. D.D.*, 2000 SCC 43 at para. 65 and *Aboujamra* at para. 78.

Patient E

Agreed Statement of Facts

[37] The following facts are taken from the parties' Agreed Statement of Facts and the phone records of Patient E.

[38] Patient E has diagnoses of depression and bipolar disorder. She saw Dr. McInnis for one medical appointment on February 28, 2018. She had recently moved and needed a doctor to refill her prescriptions. Approximately five or six years before this appointment, Patient E had coached Dr. McInnis' children in gymnastics.

[39] Dr. McInnis's receptionist opened a medical record for Patient E on the EMR at 3:50 p.m. and her appointment took place at 4:30 p.m. During the appointment, Dr. McInnis obtained the following health information from Patient E:

a. Her personal health history, including mental health;

b. Her family health history; and

c. Her social history.

[40] Dr. McInnis prescribed two medications for her mental health at this appointment: Seroquel and Lorazepam (Ativan). The prescriptions were generated at 4:37 p.m. and sent directly to the pharmacy. Patient E filled the prescriptions later that day.

[41] Dr. McInnis did not conduct a physical examination of Patient E and did not bill OHIP for the appointment.

[42] At 5:23 p.m. on February 28, 2018, Dr. McInnis sent Patient E the following text message: "Hello – it's Dr. J. If you need anything let me know." They then exchanged text messages of a social nature over the next fifteen minutes.

[43] Dr. McInnis and Patient E continued to exchange text messages the evening of March 1, 2018. Dr. McInnis offered to take Patient E to Las Vegas, pay for her passport, buy her a new dress, and stay in a five-star hotel. He told Patient E he would treat her better and adore her more than anyone before him. He called her sexy girl, darling, and sweetheart.

[44] On March 1, 2018, between 6:23 p.m. and 6:28 p.m., Dr. McInnis's receptionist deleted the chart note from the appointment and the appointment itself from the system. On March 2, 2018, between 1:57 p.m. and 1:59 p.m., she deleted the information about Patient E's diagnoses and medical history from her Complete Patient Profile. On March 1, 2018, Dr. McInnis gave a verbal order to the pharmacy to discontinue all refills of medication prescribed by him to Patient E and advised that Patient E would have a different family physician going forward.

[45] Dr. McInnis and Patient E went on their first date on March 3, 2018 and continued to date for approximately seven weeks, including going out for dinner, to social events, and having sexual intercourse. During this time, they exchanged many text messages.

[46] On March 15, 2018, Dr. McInnis provided Patient E with the name and number of another family doctor. He told Patient E to tell the doctor about all of her medications, including Percocet.

[47] On March 21, 2018, Patient E sent Dr. McInnis a text asking him if he could leave her a "p" because her back was "wonky." Dr. McInnis replied that he "should be able to assist." On March 22, 2018, Patient E sent Dr. McInnis a text asking him to bring her a couple of "Ps." Dr. McInnis responded "Np (no problem)."

[48] On March 28, 2018, Dr. McInnis sent Patient E a text with the contact information for a dentist. On March 29, 2018, Patient E saw the dentist. She sent Dr. McInnis a text telling him she had a prescription for antibiotics and "percs" and asked Dr. McInnis if he could pick them up and pay for them. Dr. McInnis told Patient E to send them (the prescriptions) to Rainbow pharmacy and he would give Patient A the "$$" for them. He told Patient A that it was better if his clinic was not directly involved with her care.

[49] Patient E saw another family doctor on April 17, 2018. Her relationship with Dr. McInnis ended shortly after that.

Was Patient E a patient of Dr. McInnis?

[50] On May 1, 2018, s. 1(6) of the Code and associated regulations came into force providing certain criteria to assist in defining "patient", without restricting the ordinary meaning of that term. For cases arising before that date, the determination of whether a person is a patient is made by considering the factors set out in *College of Physicians and Surgeons of Ontario v. Redhead*, 2013 ONCPSD 18 at pp. 25-26. The *Redhead*

factors are not a scorecard, and the overall nature of the interaction should be considered. The *Redhead* factors apply to Patient E and are set out below:

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

[51] After considering the *Redhead* criteria and the interaction between Patient E and Dr. McInnis, we find a physician-patient relationship existed between them on February 28, 2018. Patient E attended at Dr. McInnis's office for a pre-arranged medical appointment and saw him in an examination room at the Angus clinic. Dr. McInnis

obtained her personal health history, including her diagnoses of anxiety and depression, her family health history, and her relevant social history. Dr. McInnis issued a prescription for two medications, which Patient E filled that day. Dr. McInnis recorded the details of Patient E's care in her medical chart. Patient E did not have another family physician.

[52] In his evidence, Dr. McInnis stated he called the Canadian Medical Protective Association (CMPA) on March 1, 2018 to get advice on whether a physician-patient relationship existed with Patient E. Dr. McInnis testified he was advised by the CMPA that such a relationship did not exist. He provided no documentary evidence to support this evidence. Even if Dr. McInnis was provided with this advice by the CMPA, it is not determinative because the question of whether there was a physician-patient relationship is for us to decide. For the reasons we have stated, we find a physician-patient relationship existed on February 28, 2018.

Did Dr. McInnis engage in disgraceful, dishonourable or unprofessional conduct when he pursued a sexual relationship with Patient E?

[53] Dr. McInnis testified he told Patient E he could not be her doctor during the appointment. He testified he did this because of the intense sexual attraction between them when Patient E was coaching his children's gymnastics years before. Patient E testified Dr. McInnis called her a few hours after the appointment and asked how she would feel if he did not accept her as a patient because he preferred to take her on a date instead. On either account, Dr. McInnis terminated the physician-patient relationship after he met Patient E in an examination room, obtained her personal and family health history and issued two prescriptions.

[54] It does not matter whether it was mid-appointment or post-appointment when he terminated the physician-patient relationship. The issue is whether there was a physician-patient relationship and we have found that there was. The question before us is whether it was disgraceful, dishonourable or unprofessional for Dr. McInnis to pursue an intimate relationship with Patient E immediately after providing her with medical care.

[55] Within one hour of the medical appointment, Dr. McInnis contacted Patient E by text and began personal communications with her. The next day, he was using terms of endearment and promising to take her on lavish trips to Las Vegas and the spa. He offered to pay for her passport. Had Dr. McInnis believed seeing her as a patient was

inappropriate because of his feelings five or six years before when Patient E was coaching his children in gymnastics, he should have terminated the physician-patient relationship and ensured Patient E had appropriate medical care. He should not have acted on his feelings and pursued an intimate relationship.

[56] Dr. McInnis knew Patient E was vulnerable. He knew she had mental illnesses for which he prescribed medication. He knew she was unemployed and of modest means. It was disgraceful, dishonourable and unprofessional conduct for him to use his clinical office as an opportunity to pursue a relationship with Patient E and to not consider the impact of such a relationship on Patient E's mental health. As Patient E testified, she needed a doctor, not a boyfriend. She did not see another doctor until the middle of April 2018, after experiencing a significant episode of depression.

Did Dr. McInnis provide Patient E with Percocet?

[57] Patient E testified that Dr. McInnis provided her with Percocet for recreational use and that he gave them to her by hand. She said they both used Percocet and mixed it with music and sex. Patient E testified she also requested Percocet from Dr. McInnis by text. She said the reference to "p" in her text messages refers to Percocet.

[58] Dr. McInnis denied giving Patient E Percocet. He said that she requested them, but he did not comply with her request.

[59] We accept Patient E's evidence that Dr. McInnis provided her with Percocet for the following reasons.

[60] When Patient E saw Dr. McInnis on February 28, 2018, he prescribed her Seroquel and Ativan. He did not prescribe Percocet.

[61] On March 15, 2018, while Patient E was looking for a new family doctor, Dr. McInnis told Patient E to tell the doctor about all of her medications, including Percocet. It is clear from Dr. McInnis's text on this day that he knew Patient E was taking Percocet and yet she did not have a prescription for it. Patient E did not have a prescription for Percocet until March 29, 2018, when ordered by her dentist.

[62] The text messages between Patient E and Dr. McInnis indicate that Patient E asked Dr. McInnis for Percocet. Dr. McInnis testified he ignored the messages. We do not accept that evidence. Dr. McInnis was very clear in his text messages that he could

not be involved in Patient E's medical care while they were dating. He could have been equally clear that he could not provide her with medication. He was not. We conclude that he was not clear because he was providing Patient E with Percocet.

[63] Dr. McInnis regularly prescribed Percocet for office use. In February and March 2018, he prescribed 60 Percocet pills for office use. Over an 18-month period, from February 2018 to August 2019, he prescribed over 700 Percocet pills for office use. Dr. McInnis's practice of prescribing Percocet for office use provided him with easy access to this medication for his personal use.

[64] Patient E was cross-examined on why she did not tell the College that Dr. McInnis gave her Percocet in her first interview. She explained that she did not tell the College because she was embarrassed about her use of drugs and sex with Dr. McInnis. We accept this explanation and find that her delay in reporting this information does not impact her credibility.

[65] We find Dr. McInnis gave Percocet to Patient E for her own use and for their use together and in doing so, engaged in disgraceful, dishonourable or unprofessional conduct.

Patient F

[66] Patient F became a patient of Dr. McInnis in March 2018. His fiancée, Ms. X, ran a home and office cleaning service and began to clean Dr. McInnis's home in May 2018.

Evidence of Ms. X

[67] Ms. X testified that she and Dr. McInnis developed a friendship and began texting each other. They talked about getting together as couples and going to sex clubs. Ms. X testified that they sent flirtatious messages to each other, sexted, and exchanged photos. She said Dr. McInnis told her how beautiful she was, how she turned him on, described how she was dressed the day they first met, and told her he would like to rip her skirt off. She testified that Dr. McInnis sent her photos of his erect penis, and she sent him photos of herself in a bra and underwear.

[68] Ms. X testified that she shared her texts with Dr. McInnis with her fiancée, Patient F. She said that he laughed when he saw them. She told Patient F that the texts came

from a doctor in Angus by the name of James. Patient F told her that he thought it might be his doctor sending the texts.

[69] Ms. X testified that she had sexual intercourse with Dr. McInnis several times in June 2018 and gave the following evidence.

[70] Ms. X testified that the first time she had sexual intercourse with Dr. McInnis was at the Angus clinic. Ms. X and Dr. McInnis met at a restaurant. Ms. X's fiancé was away doing military training. While at the restaurant, Dr. McInnis put his hand on Ms. X's lap. She told him to stop and moved away. While at the restaurant, they spoke about Ms. X cleaning Dr. McInnis's office. They decided to go to the office that night so Ms. X could see it. They drove to the Angus clinic separately.

[71] Ms. X testified that they entered the clinic through the front door and she took a quick look around. They then went into Dr. McInnis's private office. Dr. McInnis gave Ms. X a beer and took one for himself. Ms. X described the office as having a desk with a computer and two chairs at the desk. Dr. McInnis sat at his desk and Ms. X sat on a chair. Ms. X testified that Dr. McInnis got up from his chair, placed himself behind her and put his hands at the back of Ms. X's pants. He took her pants off and they had intercourse with Ms. X standing. Ms. X testified Dr. McInnis was not wearing a condom and he ejaculated. They cleaned themselves up and she left the clinic.

[72] Ms. X testified she had sexual intercourse with Dr. McInnis again. She said that she had lent Dr. McInnis a jumping castle and went to his home to pick it up. It was lunch time and Dr. McInnis knew she was coming. She parked her vehicle in the garage, entered the home and went into Dr. McInnis's bedroom. He was naked and they had sexual intercourse. Afterwards, Dr. McInnis showed her a piece of jewellery he had purchased for his daughter's graduation that night.

[73] Ms. X testified that around this time she had sexual intercourse with Dr. McInnis at the Wasaga Beach clinic. They had agreed to meet at the clinic after hours. She parked her vehicle in the back and entered through the back door. They went into Dr. McInnis's private office, had a brief conversation and then had sex. At the beginning of their sexual intimacy, while Ms. X was performing oral sex on Dr. McInnis, he received a phone call from his girlfriend. He asked Ms. X to continue, which she did. The oral sex proceeded to vaginal sex in the office.

[74] Ms. X testified about an evening at a bar in downtown Barrie with her girlfriends, including Dr. McInnis's girlfriend. Dr. McInnis picked them up from the bar and put his girlfriend to bed because she was very intoxicated. Dr. McInnis drove Ms. X home. Ms. X testified that he pulled over to the side of the road and they had sexual intercourse in the back seat of his vehicle. Ms. X testified that Dr. McInnis ejaculated.

[75] Ms. X testified the last sexual encounter with Dr. McInnis took place the July long weekend in 2018. Ms. X testified that she left her daughter with her sister and drove to her friend, Ms. Y's home. She and Ms. Y went to Ribfest in Midland. They left Ribfest and went back to Ms. Y's residence. They then called a cab and went to a bar in Midland. Ms. X testified that Dr. McInnis met them at the bar. Ms. Y left them at the bar and went home. Ms. X testified that she and Dr. McInnis then drove to a hotel and had sexual intercourse in a hotel room. She said Dr. McInnis dropped her off at Ms. Y's home that same night.

[76] Ms. X's testimony is supported by Ms. Y. Ms. Y testified that she and Ms. X went to Ribfest and later to a bar in Midland on a long weekend in the summer of 2018. Ms. Y said Dr. McInnis joined them at the bar. Ms. Y stayed for less than one-half hour and then took a cab home. She said that Ms. X and Dr. McInnis sat next to each other and that she felt like a third wheel.

[77] Ms. X testified that she found out she was pregnant at the end of July or beginning of August 2018. She told Patient F about her pregnancy, and she decided she would have an abortion. She also told Dr. McInnis that she was pregnant. Ms. X testified that she did not know if Patient F or Dr. McInnis was the father.

[78] In August 2018, Ms. X did a Google search on how to conduct DNA tests while pregnant. Patient F found the search and confronted Ms. X. Ms. X told Patient F that she had connected with an ex-boyfriend.

[79] Ms. X testified that Patient F was very upset and angry about the affair. He was concerned that he was at risk of getting a sexually transmitted disease. She said that both she and Patient F received treatment from Dr. McInnis for a sexually transmitted infection (STI). She testified that there were two unlabelled pill bottles with multiple pills, she believed white and blue and perhaps one pain pill. Ms. X testified that she took at least four pills.

[80] Ms. X testified she received a lot of support from Dr. McInnis about her abortion. He walked her through the process step by step, told her it was going to be okay and asked if she wanted him to be present. She declined. Ms. X testified that she was very afraid and upset that she had intentionally destroyed her family.

[81] Ms. X attended at the abortion clinic at the end of August 2018, but they could not find the embryo. She returned to the abortion clinic on September 6, 2018 and they still could not find the embryo. Ms. X decided to go directly to a hospital. She testified that she spoke to Dr. McInnis on the way to the hospital. At the hospital, Ms. X learned that she had an ectopic pregnancy – the embryo was located in the right fallopian tube. She terminated the pregnancy. The phone records show that there were eight phone calls between Dr. McInnis and Ms. X on September 6 beginning at 12:49 p.m. and ending at 11:05 p.m.

[82] Ms. X testified that she talked to Dr. McInnis about her relationship with Patient F. She said she needed to tell Patient F the truth - that she had had an affair with his doctor. Ms. X testified Dr. McInnis became upset and told her that she could not tell Patient F the truth because he would lose his job and it would ruin his family. He said their youngest children were the same age and Ms. X should imagine her child losing everything, their families' names dragged out through social media and everyone knowing that she had an affair with Patient F's doctor. Ms. X said she felt very hurt and confused and did not want any of that to happen. Ms. X told Dr. McInnis that if Patient F found out he would do whatever he needed to do to stop this from happening to anyone else.

[83] Ms. X testified that Patient F continued to question her about the affair. Some time later, Ms. X changed her story and told him she had an affair with a random person at a bar on the Canada Day weekend. Ms. X testified that she did not want Patient F to know she was having an affair with his doctor. In November 2019, Patient F confronted her about her affair at her workplace and put it to her that it was Dr. McInnis that she had the affair with. Ms. X agreed.

[84] Ms. X testified that she deleted all sexual messages between her and Dr. McInnis.

Evidence of Patient F

[85] Patient F testified that he was Dr. McInnis's car mechanic and patient. They had similar backgrounds in the military and became friends. Dr. McInnis would text Patient F if he had car problems. Patient F also serviced the cars of Dr. McInnis's children.

[86] Patient F testified that at some point, he thought Ms. X was not acting like herself and he felt something was wrong. They sat down and talked, and Ms. X told Patient F that she met a man named Adam at a bar in Midland and they had sex in his vehicle, after which she went back to Ms. Y's house. Patient F testified that he was devastated by this information.

[87] Patient F testified that he was concerned about STIs and more concerned about his mental health after learning about Ms. X's affair with a stranger. He believes Ms. X was given pills for STI treatment and he likely was given pills too. He thought that he had done a urine test as well. Documentary evidence from Dr. McInnis corroborates Patient F's evidence that he received care and treatment from Dr. McInnis for concerns regarding his sexual health: an EMR-generated lab requisition on August 30, 2018 to test Patient F for chlamydia and gonorrhea and a corresponding OHIP billing for urinalysis on the same date.

[88] Patient F testified that after learning about the affair, he felt he was not going down a good road mentally and went to see Dr. McInnis at the Angus clinic. He spoke to someone at the front desk and said it was really important that he see Dr. McInnis because he was not in a good place. Dr. McInnis took him in, and they went into his personal office. Patient F said he told Dr. McInnis everything about Ms. X having sex with Adam at a bar. Patient F said Dr. McInnis advised him to either work it out or break up. Patient F testified that he thought Dr. McInnis would provide a referral for counselling, but never did.

[89] Patient F testified he went back to see Dr. McInnis two more times. On the third visit he was in a mental health crisis. He could not stop thinking about Ms. X's affair, could not sleep and needed someone to talk to. He was sitting in Dr. McInnis's personal office. Patient F testified that Dr. McInnis would not look at him and was sweating profusely. He wondered why Dr. McInnis had not referred him for counselling when he felt his reaction was serious and that he was experiencing PTSD symptoms. Patient F

testified that he remembered Ms. X had dinner with Dr. McInnis while he was doing military training. Patient F thought something was wrong.

[90] Patient F left Dr. McInnis's office and drove to Ms. X's workplace. On the way, he called Ms. Y and asked whether it was Dr. McInnis with whom Ms. X had the affair. He confronted Ms. X at her workplace and put it to her that it was Dr. McInnis. Ms. X told him he was right. Patient F testified that he believed this happened on November 5, 2019.

[91] On November 5, 2019, Dr. McInnis texted Patient F and called him twice between 10:46 a.m. and 1:23 p.m. In his first text at 10:46 a.m., Dr. McInnis said, "Hey [Patient F], everything OK." In his last text at 1:23 p.m., he said "I'm guessing there's some issue here?? I'll tell the kids to stop bothering you and I will step back as well. Take care."

[92] Patient F responded at 1:24 p.m. and said:

> There is a VERY big issue James. I'd appreciate that. I'll be getting a new doctor as quickly as I can in the meantime. Don't call me don't message me ever again.

[93] Dr. McInnis did not respond to Patient F's text.

Evidence of Dr. McInnis

[94] Dr. McInnis denies that he had a sexual relationship with Ms. X.

[95] Dr. McInnis testified that he did meet Ms. X and Ms. Y at the bar in Midland, but it happened in late spring early summer 2018. He said he could not have been at the bar in Midland during the long weekend in July 2018 because he took all four of his children camping in Niagara Falls, Ontario. He provided the receipt from the camping facility. The receipt is for camping from Saturday June 30 to Wednesday July 6, 2018, for two adults and one child, between the ages of 3 and 17. Dr. McInnis testified that his daughter Ceilidh was the second adult on the camping trip. The Friday night of the long weekend is not included in the reservation.

[96] Dr. McInnis denies that Patient F came to his office three times for counselling in relation to Ms. X's affair. He said patients are logged into the EMR system even if they are an emergency add-on and there is no indication in Patient F's chart or in the OHIP

billings of these attendances. There are only two appointments in Patient F's chart: March 14, 2018 and May 24, 2018.

[97] The difficulty with Dr. McInnis's reliance on the chart is that much of his medical care to Patient F is not charted. There are requisitions for X-Rays, CT scans, ultrasounds and bloodwork for Patient F with no patient encounter notes to explain the need for these investigations. If Dr. McInnis did not chart this care, what conclusions can be drawn by the fact that he did not chart the sessions he had with Patient F in his office?

[98] Dr. McInnis's assertion that Patient F's attendance would have been logged in by the front desk is also not credible. There is documentary evidence that suggests there were occasions where Patient F was seen in Dr. McInnis's office and the encounter is not documented, such as the completed Driver's License Medical Report form dated August 22, 2019. Dr. McInnis's evidence that he completed this comprehensive assessment for this report, including an eye examination with a Snellen chart, hearing examination, vital signs and urinalysis in Patient F's autobody shop is not credible as it is highly unlikely that he would have had the necessary equipment to complete these tests remotely.

[99] Dr. McInnis was asked questions about treatment for STIs. He said the concurrent treatment of chlamydia and gonorrhea involves four tablets of azithromycin and two tablets of cefixime per patient. On August 30, 2018, Dr. McInnis prescribed eight tablets of azithromycin 250 mg and four tablets of cefixime 400 mg for office use, exactly enough to treat two people for concurrent chlamydia and gonorrhea, the same STIs for which he was testing Patient F on the same date. His evidence that this was prescribed for office use for some other reason is not credible.

[100] Dr. McInnis was asked questions about his communications with Ms. X in September 2018. They spent 2.5 hours on the phone between September 4 and 8. Dr. McInnis stated he knew nothing about her pregnancy and their conversations focused on her career. It is not credible that Ms. X would be focused on her career when she was in the process of terminating a difficult pregnancy. It is more likely that they were talking about Ms. X's abortion and Dr. McInnis was providing support to Ms. X. This raises the question as to why Dr. McInnis would deny knowledge of Ms. X's pregnancy and

abortion. The logical inference to draw is he denied knowledge because he was implicated in the pregnancy.

Finding on Sexual Relationship with Ms. X

[101] Ms. X was a credible and reliable witness. She was consistent and unwavering in her evidence about her sexual relationship with Dr. McInnis, and her evidence was clear and detailed. Ms. X testified that she and Patient F are no longer together. She did not appear to have any interest in the outcome of the proceedings.

[102] Ms. X's evidence that she was with Dr. McInnis after Ribfest was corroborated by Ms. Y. While Ms. Y did not remember it was the Canada Day long weekend, she did recall that they met Dr. McInnis after Ribfest on a summer long weekend.

[103] Ms. X was cross-examined about some of the details of her sexual encounters with Dr. McInnis. Her inability to remember details about the first sexual encounter including whether Dr. McInnis put his hands in her pants first while she was seated and whether she was fully undressed are all peripheral and have little impact on her credibility. Similarly, her inability to recall how far Dr. McInnis's home was from the Wasaga Beach clinic and what discussion they had after they got naked do not undermine her evidence nor does her inability to say how long they had been driving before they had sex in the back of Dr. McInnis's car.

[104] Ms. X admitted that she lied to Patient F about the person with whom she had an affair. She explained why. She said she did not want to hurt Patient F by telling him she had an affair with his doctor. She also said Dr. McInnis gave her many reasons to conceal their affair: he would lose his job, she would ruin his family, his youngest daughter would lose everything and the affair would become public and result in reputational harm to her. She testified that Dr. McInnis made her feel hurt and very confused.

[105] Although Ms. X lied to Patient F when she told him her affair was with a random person, some of what she said to Patient F is consistent with her evidence before us: that she met someone at a bar on the Canada Day long weekend. This consistency provides further support for our finding that Ms. X is credible.

[106] In final argument, counsel for Dr. McInnis challenged the credibility of Patient F by asserting his evidence was contrary to the evidence of Ms. X. For example, Ms. X

testified that when she shared her texts with Dr. McInnis with Patient F, he laughed. Counsel said this reaction flies in the face of common sense – that Patient F would have laughed it off given his dogged determination to identify the person with whom Ms. X had the affair.

[107] This notion was put to Patient F and he said Ms. X is an attractive woman and he chose to trust his fiancée when she shared her communications with Dr. McInnis. Presumably that no longer held true once he determined that she had breached his trust. There was good reason why Patient F's reaction changed. We do not find his evidence contradicts the evidence of Ms. X.

[108] Dr. McInnis's evidence, on the other hand, is not credible. When faced with the corroborating evidence of Ms. Y, Dr. McInnis acknowledged that they had met at the bar, but said it happened in late spring, early summer. His evidence was not supported by Ms. Y who confirmed that she met Dr. McInnis during a long weekend in the summer after Ribfest. When confronted with the allegations on the Canada Day long weekend, Dr. McInnis relied on a camping receipt that does not include the Friday night of the long weekend. When confronted with the 2.5 hours of telephone conversations with Ms. X in early September 2018, he said they talked about her career. Ms. X was going through an extremely difficult pregnancy and termination of the pregnancy. It is simply not credible that she would be talking to Dr. McInnis about her career.

[109] We accept the evidence of Ms. X and find on a balance of probabilities that she had an intimate sexual relationship with Dr. McInnis.

Finding on Treatment of Patient F

[110] When Dr. McInnis decided to have a sexual relationship with Ms. X, he should have terminated the physician-patient relationship with Patient F. In failing to do so, he engaged in disgraceful, dishonourable and unprofessional conduct. Not only did he not terminate the physician-patient relationship, he continued to treat Patient F.

[111] We accept Patient F's evidence that he went to Dr. McInnis about the affair and sought medical care and counselling. We also accept his evidence that Patient F terminated the physician-patient relationship when he learned Dr. McInnis was the person with whom Ms. X was having the affair. As soon as he learned of Dr. McInnis's identity, Patient F sent him a text terminating the relationship. There is no other reason

why Patient F terminated the relationship. It is telling that Dr. McInnis did not respond to that text message. They were friends and if there was a different reason for the termination, it is likely Dr. McInnis would have asked. We find Dr. McInnis did not ask because he already knew the reason - that he had had an affair with Patient F's fiancée. Dr. McInnis engaged in disgraceful, dishonourable and unprofessional conduct when he provided care to Patient F while having an affair with his fiancée.

Nurse C

Sexual Relationship

i. Nurse C's Evidence

[112] Nurse C was Dr. McInnis's practice monitor and nurse. She started working for Dr. McInnis in February 2019. It was the first time that she had worked as a practice monitor.

[113] Nurse C testified that within a couple of weeks of commencing her employment, Dr. McInnis started making flattering personal comments to her. For example, he told her she was "fucking gorgeous." Later, Dr. McInnis attempted to kiss her. Nurse C said that she put her hand up to stop him the first time, but the second or third time he attempted to kiss her, she allowed it. In mid to late February 2019, Nurse C and Dr. McInnis had a two-hour phone call where Nurse C disclosed to him that she had experienced childhood sexual abuse. Nurse C testified that Dr. McInnis continued to make personal comments using more sexualized language. He said she had a "tight ass," that "he would kiss her right now," and would "rip her clothes off." In March 2019, Nurse C and Dr. McInnis engaged in heavy kissing and groping and Dr. McInnis touched her vagina underneath her underwear and the back support that she was wearing. Nurse C testified that she felt Dr. McInnis's erect penis against her.

[114] Nurse C testified that at the end of March 2019, she and Dr. McInnis had sexual intercourse at Dr. McInnis's home, in his bedroom. She described the layout of his bedroom and ensuite bathroom, including a description of the countertop in the bathroom. Nurse C acknowledged that she had been to Dr. McInnis's home to help him fix his phone in early March and said it was possible she may have been given a quick house tour. She did not say the tour included Dr. McInnis's bedroom and bathroom.

[115] Nurse C testified that she had sexual intercourse with Dr. McInnis a second time at the Wasaga Beach clinic. She said Dr. McInnis began masturbating, took her hand and put it on his penis. Nurse C started to rub his penis. Dr. McInnis told Nurse C to "sit on it." Nurse C said she pulled down her pants and underwear, sat on top of Dr. McInnis and had vaginal penetration.

[116] Nurse C testified that she had sexual intercourse with Dr. McInnis a third and last time on a red velvet blanket on the floor of his office at the Wasaga Beach clinic. Nurse C said Dr. McInnis asked her if she was on birth control while they were having sex. Nurse C said no. Dr. McInnis told her that he had a vasectomy that was reversed. He told Nurse C not to worry because it was very unlikely that she would get pregnant given his low sperm count.

[117] Nurse C testified that she ended the relationship at the end of April 2019.

[118] On August 29, 2019, Patient A disclosed to Nurse C allegations of impropriety by Dr. McInnis with her. The next day, Nurse C reported the allegations to the College. Shortly after reporting the allegations, Nurse C went on a sick leave.

[119] As part of her obligations as practice monitor, Nurse C signed an undertaking with the College, the terms of which relate primarily to monitoring Dr. McInnis's encounters with female patients. The undertaking included a general provision to notify the College if Nurse C felt Dr. McInnis's behaviour and/or actions were improper in any way.

[120] Nurse C agreed to submit a monthly written report to the College that included information about her compliance with the undertaking, Dr. McInnis's compliance with the terms of his Discipline Committee order and any other information that would assist the College in its monitoring of Dr. McInnis.

[121] Nurse C submitted monthly reports to the College. She did not tell the College about her sexual relationship with Dr. McInnis in her monthly reports or about any other concerns with his behaviour. She did not tell the College about her sexual relationship with Dr. McInnis during her first interview with the College. Nurse C testified that she did not tell the College because she was scared and knew there was a lot that she had done wrong. She said:

> I didn't report a lot of things that I knew had major consequences. I was in the middle of a terrible home situation. It was imminent that

> I would be on my own. I might lose my ability to provide for my daughter who was very young. I was scared. I was ashamed. It is not in my character to be dishonest and to not report things I should have reported. I was embarrassed. Part of me didn't know how to bring up those things. There was the weight of how it would affect other people due to things that were spoken about in the past. That is why I was scared.

[122] Nurse C testified that she did not deliberately lie to the College in her monthly reports. Nurse C said her relationship with Dr. McInnis was different because they had talked about how it was normal for people to have relationships, how she felt about herself, and her own lack of self worth. Nurse C testified that she knew about her undertaking but felt intimidated and frightened with so many lives affected.

[123] Nurse C told the College about her sexual relationship with Dr. McInnis in a subsequent interview when she was asked specifically about staff. Nurse C admitted the relationship, but she did not tell them about the incident in the office when he put his hands down her pants and touched her vagina. She said she had interviews with the College where different things were discussed. Although the incident in the office was memorable, it was an oversight not to include it. Nurse C testified that the event was one of the first, was quick, and preceded encounters where sexual intercourse took place.

ii. Dr. McInnis's Evidence

[124] Dr. McInnis denies that he had a sexual relationship with Nurse C.

iii. Did Dr. McInnis and Nurse C have a sexual relationship?

[125] Nurse C was a credible and reliable witness. She gave clear and detailed evidence about things that she would have known about because of her intimate relationship with Dr. McInnis. For example, she was able to describe Dr. McInnis's bedroom and bathroom. There is no evidence that the quick house tour on the day she was there to fix Dr. McInnis's phone included those rooms. Nurse C knew that Dr. McInnis had had a vasectomy and stated in cross-examination that she could not recall Dr. McInnis talking about vasectomies with his patients. Her knowledge of these facts supports the finding that she and Dr. McInnis had a sexual relationship.

[126] The phone records between Dr. McInnis and Nurse C from February to April 2019 lend further support for this finding. During this time, there were many calls between

Nurse C and Dr. McInnis and some were very late at night. For example, on February 28, 2019, Dr. McInnis called Nurse C at 10:46 p.m. and they spoke for 81 minutes. We do not accept Dr. McInnis's evidence that these late-night calls were for "teaching moments." The call history changed in May 2019 after their relationship ended. There were fewer calls, and they were much shorter in duration.

[127] Text communications between Dr. McInnis and Nurse C also support this finding. Text messages were exchanged between Dr. McInnis and Nurse C after she reported him to the College. In the first text message from Dr. McInnis on September 4, 2019, he said that he could not believe she was doing this (reporting to the College) after they were trying to rebuild their relationship and knowing what Patient A was capable of. Dr. McInnis said, "please explain to my daughter why she'll be dropping out of nursing school because I've lost my license" and that Nurse C was ruining his life over someone trying to get drugs. Nurse C responded that she was obligated to report to the College what the patient reported to her and that it was up to the College to determine the outcome. Nurse C denied that it was a spiteful or hateful personal attack as she believed Dr. McInnis was making it out to be.

[128] On September 6, 2019, Dr. McInnis apologized for his emotional outburst on September 4. In his text, he said the following:

> I know things happened between us [Nurse C] personally and I had hoped we have moved past this into a good, friendly working relationship.

[129] While these texts are not determinative on their own, they do support the finding that Dr. McInnis and Nurse C had an intimate relationship.

[130] We acknowledge that Nurse C did not report their relationship to the College in her monthly reports. We note the first report to the College was on April 5, 2019 and the relationship ended a few weeks later. At the time of the subsequent reports, they were not in a relationship.

[131] We accept Nurse C's evidence that she did not report to the College because she had normalized her relationship with Dr. McInnis. While her perception was wrong, it is understandable. The undertaking with the College is focused primarily on Dr. McInnis's interactions with female patients, not female staff. While she was obligated to report anything of concern to the College, it is not difficult to see why she saw her relationship

with Dr. McInnis differently. We also accept her evidence that she did not disclose the relationship because she was concerned about the impact of the disclosure on many people. We accept Nurse C's evidence that she delayed telling the College in her early interviews because she was embarrassed, ashamed and knew she had done something terribly wrong.

[132] Apart from his denial, Dr. McInnis asserts Nurse C made up the intimate relationship to cover up her addiction to hydromorphone. We do not accept his assertion for the following reasons.

[133] There is no evidence that Nurse C had a drug addiction to hydromorphone. This question was put to her in cross-examination. Nurse C admitted that she had been prescribed hydromorphone for pain but did not have an addiction to it. A non-medical staff person at the clinic testified that she believed Nurse C had a drug addiction but provided no concrete evidence to support it other than she knew when a person is high. She relied on one incident when Nurse C provided an incorrect vaccine to a five-year old boy. Nurse C explained the error occurred because she had misread the vaccine box and she later moved the box so that the error would not happen again. The error had no ill effects on the child. This error does not establish that Nurse C had a drug addiction.

[134] It makes no sense that Nurse C would fabricate an intimate relationship with Dr. McInnis to cover up an addiction. It is simply illogical that a sexual relationship would provide such cover.

[135] The most compelling reason to believe Nurse C is the adverse consequences that she would expect to experience because of her relationship with Dr. McInnis. Losing her job was only one. Given these consequences, we do not believe that she would fabricate their relationship.

[136] Dr. McInnis asserts that had there been a relationship between him and Nurse C, there would have been messages between them where they discussed their feelings towards one another because Nurse C testified such messages existed. He says the fact that there are no such messages on their phones suggests that there was no romantic or sexual relationship. The difficulty with this assertion is that there are text messages that support the inference that there was a relationship between them. Further, Nurse C testified that she deleted some messages. We heard from the College's expert, Mr. Musters, that it is not always possible to obtain deleted messages. We know the forensic

imaging of the phones is not completely accurate because there were 507 text messages between Dr. McInnis and Nurse C on Nurse C's phone and 304 text messages between them on Dr. McInnis's phone. Given that the forensic imaging of the phones does not provide a complete version of the text history, we cannot draw any conclusions from the absence of messages on the two phones.

Sexual Abuse

[137] Nurse C testified that Dr. McInnis provided her with medical care. She said he administered Toradol injections six to eight times for migraines, approximately once or twice per month, for the duration of her employment from February to August 2019. While Dr. McInnis denied administering these injections to Nurse C, he did admit, and the pharmacy records demonstrate, that he routinely prescribed Toradol for office use and administered these injections frequently. We find Dr. McInnis administered Toradol injections to Nurse C.

[138] The issue before us is whether Nurse C was a patient when she was treated by Dr. McInnis with Toradol. In determining whether an individual is a patient, we must consider the criteria under O. Reg. 260/18:

> 1. The following criteria are prescribed criteria for the purposes of determining whether an individual is a patient of a member for the purposes of subsection 1 (6) of the Health Professions Procedural Code in Schedule 2 to the Act:
>
> 1. An individual is a patient of a member if there is direct interaction between the member and the individual and any of the following conditions are satisfied:
>
> i. The member has, in respect of a health care service provided by the member to the individual, charged or received payment from the individual or a third party on behalf of the individual.
>
> ii. The member has contributed to a health record or file for the individual.
>
> iii. The individual has consented to the health care service recommended by the member.
>
> iv. The member prescribed a drug for which a prescription is needed to the individual.

> 2. Despite paragraph 1, an individual is not a patient of a member if all of the following conditions are satisfied:
>
> i. There is, at the time the member provides the health care services, a sexual relationship between the individual and the member.
>
> ii. The member provided the health care service to the individual in emergency circumstances or in circumstances where the service is minor in nature.
>
> iii. The member has taken reasonable steps to transfer the care of the individual to another member or there is no reasonable opportunity to transfer care to another member.

[139] An individual is a patient under s. 1(1) if any of the conditions are satisfied. We find Nurse C was a patient under s. 1(1) iii – that she consented to the health care service (Toradol injections) recommended and administered by Dr. McInnis. If Dr. McInnis administered the injections, he must have recommended the treatment.

[140] Section 2 provides an exception to the patient finding if all of the criteria listed are met. Dr. McInnis started treating Nurse C with Toradol in February 2019. At that time, there was no sexual relationship between Dr. McInnis and Nurse C. In the absence of a sexual relationship, the patient exception does not apply. It is not necessary to consider the remaining criteria under s. 2.

[141] In treating Nurse C's migraines in February 2019, she became his patient and remained his patient for one year under s. 1(6) of the Code. Dr. McInnis continued to treat Nurse C throughout her employment. When he had a sexual relationship with Nurse C in March and April 2019, it was concurrent with their physician-patient relationship thereby constituting sexual abuse.

[142] We accept the evidence of Nurse C and find it is more likely than not that Dr. McInnis made personal comments about her appearance, touched her in inappropriate ways, and had sexual intercourse with her. Dr. McInnis knew about her history with childhood sexual abuse and knew her marriage had broken down. He knew she needed her job to support her child. Dr. McInnis took advantage of her vulnerability and engaged in a sexual relationship with Nurse C notwithstanding the power imbalance between them. He furthered her dependency by providing medical treatment to her. These actions undermined Nurse C's independence as a practice monitor and dissuaded her from

reporting him to the College. Dr. McInnis's behaviour with Nurse C was disgraceful, dishonourable and unprofessional. We note further that even if Dr. McInnis had not abused his power and taken advantage of Nurse C, having a sexual relationship with a practice monitor is, on its own, disgraceful, dishonourable and unprofessional.

[143] We find further that Dr. McInnis committed sexual abuse of a patient pursuant to s. 1(3) of the Code.

Patient A

Patient A's Evidence

[144] Patient A was a patient of Dr. McInnis in December 2018 and throughout 2019. He provided medical care, including care for her drug addiction.

[145] Patient A attended her first two medical appointments along with her former partner. She attended the third appointment on her own on April 2, 2019. When she left the appointment, she met her mother in the parking lot. Dr. McInnis called her mother's cell phone and asked to speak with Patient A. Patient A testified that Dr. McInnis wanted information about where she lived. She told Dr. McInnis that she lived at a hotel in Angus.

[146] Patient A testified that Dr. McInnis came to her hotel room later that day, five or six minutes after the Angus clinic closed at 5. She testified Dr. McInnis brought a pill bottle with him containing eight hydromorphone tablets and two biphentin tablets. She said the biphentin tablets were pink. Patient A testified that she said to Dr. McInnis that he must want something in return. He responded that there did not have to be. Patient A testified that Dr. McInnis sat on the bed beside her and said his dick was hard and wanted her to touch it. He asked her if he could feel her lips on his dick. Patient A refused to give Dr. McInnis oral sex. She testified that she pressed down on Dr. McInnis's penis and rubbed it over his pants. She said he was not there long, maybe 20 minutes.

[147] Patient A testified that she and Dr. McInnis made plans for him to return. She requested clean syringes. She said Dr. McInnis returned to her hotel room on April 4, 2019 and brought two to four hydromorphone tablets, clean syringes, and urine sample containers. Patient A testified the pills were in a clear plastic pill bottle with no label. Patient A said she was trying to inject the pills that he gave her after diluting them with

water. Dr. McInnis started masturbating and said it turned him on to watch Patient A doing drugs. Patient A testified that Dr. McInnis spoke about his sexual fantasies and that he liked girls 14 or 15 years old.

[148] Patient A testified that prior to Dr. McInnis's arrival she had arranged with a friend to come to her hotel room to see if she was interested in having sex with Dr. McInnis. She said the deal with Dr. McInnis was the more women she could provide, the more drugs he would provide as long as he could prescribe them. When her friend arrived, she gave Patient A the signal that she was not interested. Dr. McInnis left shortly after Patient A's friend arrived.

[149] Patient A went to the OPP about Dr. McInnis on April 4, 2019 and spoke to Detective Constable Hargreaves (now Detective Sergeant Hargreaves).

[150] Patient A testified there were a couple of occasions when she was out of pills where Dr. McInnis would meet her at her parent's mailbox and hand her a couple of hydromorphone pills. She described the pills as blue gel caps and said Dr. McInnis gave them to her by hand.

[151] Patient A testified that Dr. McInnis came to L's home. L is a friend of Patient A and is transgender. Patient A testified that Dr. McInnis brought hydromorphone 4.5 mg tablets with him. The pills were blue gel caps and he gave them to her by hand. While Patient A was injecting the drugs that Dr. McInnis had brought, Dr. McInnis took off Patient A's leggings, undid his fly, took out his penis and he penetrated her from behind as Patient A was leaning over the arm of the couch and end table. Her friend was sitting on the couch.

[152] Patient A testified that Dr. McInnis spoke about his attraction to young girls. He called her when she was at a splash pad with her daughter, and he told her that he had gone to Cuba and had sex with an eleven-year-old girl. She said he called her from Wonderland in the summer and told her he was looking at twelve-year-old girls with tight asses.

[153] On June 14, 2019, Dr. McInnis and Nurse C spoke to Patient A and asked whether she had gone to the police. Patient A denied going to the police.

[154] On August 22, 2019, Dr. McInnis changed Patient A's medication protocol and required all medication to be dispensed through Patient A's mother.

[155] Patient A testified that meeting Dr. McInnis ruined her life. Had she not met him, she would not have had someone telling her it was okay to do drugs as long as there was a "script" and it was legal.

Dr. McInnis's Evidence

[156] Dr. McInnis denied going to Patient A's hotel room on April 2, 2019. He testified he left the Angus clinic around 5:00 p.m. and went to his home to pick up his son in Minesing, northeast of the clinic. His home is 15-20 minutes away from the clinic. They travelled south on Highway 400 to a hockey game at the Scotiabank Arena in Toronto. The game started at 7 p.m.

[157] Dr. McInnis testified it took him at least two hours to get to the hockey game. He provided bank records that show purchases from the Scotiabank Arena concessions on April 2. The purchases are not time-stamped.

[158] Lorne Ellison is a specialist in the lawful access response department at Rogers Communications. He testified that when a cell phone is on, it typically connects to the strongest cell tower. He said on April 2, 2019, Dr. McInnis's cell phone was in the coverage of the following cell towers at the noted times:

16:04 p.m.	Angus (south of Angus clinic)
5:22 p.m.	Base Borden (northwest of Angus clinic)
5:23 p.m.	East of Angus clinic
5:30 p.m.	Northeast of Angus clinic
7:16 p.m.	Highway 401
8:30 p.m.	1 York Street (Scotiabank Centre)

[159] This evidence contradicts Dr. McInnis's evidence that he stopped work at 4:57 p.m. and went directly home to pick up his son for the hockey game. Had he done that, he would have arrived at his home around 5:15/5:20 p.m. At 5:22 p.m., his phone pinged at the cell tower near Base Borden. Base Borden is west of the Angus clinic, in the opposite direction of Dr. McInnis's home. It was not until 5:23 p.m. that he began travelling in the direction of his home. This means there was approximately 20 minutes that Dr. McInnis cannot account for. This was the same time period that Patient A says he was at her hotel.

[160] Dr. McInnis testified that he did go to Patient A's hotel room on April 4, 2019. He said Patient A met him at the Angus clinic towards the end of the day. Patient A told him she had a friend at the hotel who was threatening to harm himself. Dr. McInnis testified that Patient A told him if she called 911, he would harm himself, but he had agreed to talk to her doctor. He told Patient A that he had to finish his workday and if her friend got worse, she had no choice but to call 911. Dr. McInnis testified that he finished his work, grabbed his six-year-old daughter and went to the hotel. He parked in front of the hotel and left his daughter in the car. He went to the door of the hotel room and spoke to the man for several minutes. Dr. McInnis testified the situation had drastically de-escalated and the man did not meet the criteria for a Form 1. He left literature on crisis intervention in the room and left. He did not document this attendance. Dr. McInnis denied that he masturbated in front of Patient A and discussed sexual fantasies with her.

[161] Dr. McInnis denied the remaining allegations of Patient A. In particular, he denied that he went to L's, denied he gave her drugs in exchange for sex, denied he gave her drugs at her parent's mailbox, denied he had said he molested a young girl in Cuba (he said he had never been to Cuba), and denied he commented about young girls at Wonderland.

CoverMe Application

[162] The parties agree to the following facts regarding CoverMe.

[163] CoverMe is a private communications application for use on devices such as cell phones. It provides encryption for voice and text message communications. CoverMe disguises the caller's real phone number. A party receiving a phone call or text message from an individual using CoverMe is shown, instead of the caller's real phone number, an artificial phone number which is owned by CoverMe. When they reply to the artificial

phone number, the message goes to the CoverMe service, which in turn passes the message to the CoverMe application on the original user's phone.

[164] CoverMe was installed on Dr. McInnis's cell phone on April 26, 2019 at approximately 8:29 p.m. The email address associated with the CoverMe account was Dr. McInnis's email address. The username and password for the CoverMe account were saved in a note on Dr. McInnis's phone.

[165] Between April 27, 2019 and May 3, 2019, Patient A exchanged text messages with a number she saved in her phone under the name "Jim." The following messages were on her phone.

[166] On April 27, 2019, one day after the CoverMe app was installed on Dr. McInnis's phone, a sender identified as "Jim" sent a message to Patient A that he took her advice and now has a number she can contact him on whenever she likes. On April 28, 2019, a sender identified as "Jim" sent a text to Patient A and said he was "very fucking horny" for her and wanted "to cum deep inside that curvy body" of hers. On April 29 and 30, and May 3, 2019, the sender identified as "Jim" sent texts to Patient A to see if she was okay. On May 3, 2019, Patient A sent a text to "Jim" and said she was going to be honest with him because he was her doctor and said she was having a very difficult time. The sender identified as "Jim" responded and asked if she needed more Valium or medicine for her stomach.

[167] Dr. McInnis's daughter, Ceilidh McInnis, testified that in or around April 2019, her cell phone was not working well. The screen was broken and it was difficult to text. She said she downloaded an app on her father's phone so that she could send private texts to her boyfriend. Ms. McInnis said she looked up an app from the App store that would give her privacy and chose CoverMe. She used her dad's ITunes account to purchase the app and installed it on Dr. McInnis's phone. She was 21 years old at the time.

[168] The CoverMe app was deleted at 10:01 a.m. on June 13, 2019 by Dr. McInnis's administrative assistant, Jessica Rogers. Dr. McInnis asked Ms. Rogers to delete the app.

[169] The fact that the app was downloaded on Dr. McInnis's phone, his email address was associated with the account, the username and password for the app were stored in a note on Dr. McInnis's phone, and the app was deleted at Dr. McInnis's request make it

more likely than not that the CoverMe app was installed on Dr. McInnis's phone for his own use.

[170] We do not accept Ceilidh McInnis's evidence that she downloaded the CoverMe app on Dr. McInnis's phone so that she could send private texts to her boyfriend. It is surprising, to say the least, that a 21-year-old would want to use her father's phone, a phone that he used a great deal, for that purpose. Further, if she wanted the app to ensure privacy with her boyfriend, she would not have saved the username and password for the app on her father's phone. Dr. McInnis had the app deleted. There was no reason for him to delete an app his daughter had installed for her own use because it would contain only messages that pertained to her.

[171] We find the CoverMe app was downloaded on Dr. McInnis's phone for his own use and specifically so that he could communicate with Patient A. The text messages from "Jim" on the CoverMe app to Patient A were from Dr. McInnis. We make this finding for the following reasons.

[172] The first message from "Jim" was sent on April 27 at 2:40 p.m. The message said he now had a number that Patient A could contact him at whenever she liked. The timing of this message coincides with the installation of CoverMe the night before.

[173] Dr. McInnis testified that on the morning of June 13 he returned a call that he had received from the OPP. He said there was not much going on that morning, and he decided to go down and deal with the OPP and help them out. He testified that he dealt with the police a lot, especially in relation to the Wasaga Beach practice. Dr. McInnis testified that he asked Jessica Rogers to delete the CoverMe app because he did not use it and did not know how to delete it.

[174] Detective Kolodziechuk is an officer with the OPP. She testified that she spoke to Dr. McInnis on June 13 and told him she needed to speak with him in person because it had been alleged that he was trafficking in prescription medication and behaving inappropriately with patients. The call between Detective Kolodziechuk and Dr. McInnis ended at 9:57 a.m. on June 13, 2019. The app was deleted at 10:01 a.m. Dr. McInnis arrived at the police station at 10:20 a.m.

[175] We accept Detective Kolodziechuk's evidence and find Dr. McInnis knew the police were investigating serious allegations against him when he instructed Ms. Rogers

to delete the app. The app was deleted four minutes after Dr. McInnis spoke to the OPP. We find on a balance of probabilities that Dr. McInnis deleted the app because he did not want a record of his communications with Patient A.

[176] Dr. McInnis speculates that it is possible for someone to make false communications by creating a fake name and number and then communicating back and forth to that person. Mr. Musters agreed in cross-examination that this is possible. Beyond this mere possibility, there is no evidence that Patient A created a false conversation with “Jim.”

[177] In conclusion, we find the CoverMe app was downloaded on Dr. McInnis’s phone for his own use. The messages on the CoverMe app from April 27 to May 3, 2019 to Patient A were from Dr. McInnis.

April 26, 2019

[178] Patient A met with the OPP again on April 26, 2019. She testified about a phone call that she received while she was at the police station. She said she was meeting with two police officers when a call came in on her phone from “Dr. McInnis, Wasaga Beach.” She put the call on speaker phone and the two officers listened in. Patient A testified she and Dr. McInnis talked about the need for her to do urine screens, that she asked if he could do the screens for her, and he said that he could, but would have to take Valium. At some point, the police officers gestured to Patient A to end the call.

[179] Patient A’s evidence about the phone call on April 26, 2019 is corroborated by Detective Sergeant Hargreaves, one of the officers with Patient A when the call came in. He testified the phone call came in at 4:52 p.m. on April 26, 2019 and lasted 7 minutes and 51 seconds. The phone number was the Wasaga Beach clinic number.

[180] Detective Sergeant Hargreaves testified the call commenced with a standard phone greeting and Patient A spoke with a male. The conversation turned to speaking about drug usage and other things. The caller complimented Patient A that she looked very good, he commented about her ass, tits and said he couldn’t wait to see her. There was a suggestion that she rent a hotel room. The male caller told Patient A to stop using illicit drugs and use regulated narcotics. He said that while on methadone, she would have to provide urine samples. He offered to provide those and said something about taking bennies before. Detective Sergeant Hargreaves said that the male caller said he

needed to get an IP or burner phone. Detective Sergeant Hargreaves took a picture of Patient A's phone shortly after the conversation took place.

[181] Dr. McInnis testified he left the Wasaga Beach clinic around 3:00 p.m. on April 26 and met his six-year-old daughter's school bus. He took his daughter to the park, and he worked remotely for an hour or so using his phone to hotspot the internet connection while she played at the park. He then met Ms. Bourassa, his accountant and former spouse, at the park. Ms. Bourassa was helping Dr. McInnis collate his finances to help with the drafting of a separation agreement between him and his then spouse. He testified Ms. Bourassa left around 5:00 p.m. and he continued to work at the park until about 6:00 p.m. At 4:52 p.m., Patient A's chart was open on Dr. McInnis EMR system. He testified he caught up on administrative tasks on Fridays for patients he saw during the week and may have had several windows open at one time on his computer. He stated he was meeting with Ms. Bourassa at 4:52 p.m. Dr. McInnis denied making the call to Patient A while she was with the police.

[182] Dr. McInnis suggested that it is possible that someone else made the call but did not identify who that person might be. Mr. Musters testified it is very difficult to spoof a call. There is no evidence before us of anyone who had the technical ability to create a fake phone call to Patient A using the Wasaga Beach clinic number.

[183] Ms. Bourassa testified she had an appointment scheduled with Dr. McInnis for 4:15 p.m. on April 26. She said she met Dr. McInnis in a park for 30-45 minutes. She had a fundraiser scheduled before that, which she did not attend. Ms. Bourassa could not recall the specific time she met Dr. McInnis at the park.

[184] While Ms. Bourassa's evidence establishes a meeting with Dr. McInnis was scheduled for 4:15 p.m., it does not establish that the meeting took place at that time. Given the informality of meeting Dr. McInnis in a park and because her schedule had freed up, it is possible that Ms. Bourassa met Dr. McInnis before 4:15 p.m. Had she done so, the meeting would have concluded before the 4:52 p.m. call.

[185] Dr. McInnis's evidence about the park is not credible. It is not credible that he took his six-year-old daughter to the park for three hours in April. It is unlikely a child that young would last three hours in a park at that time of year. It is also unlikely that he would work remotely from a park over a period of three hours while using his phone to

hotspot an internet connection. There is no indication in Patient A's chart of any work done by Dr. McInnis for her on April 26.

[186] Patient A's chart was opened at 4:52 p.m. on April 26, the exact time the phone call was made to Patient A. The caller said he must download an app to speak with Patient A. The CoverMe app was downloaded that night. There is no evidence that someone else made the call from the Wasaga Beach clinic. It is not enough for Dr. McInnis to raise the mere spectre of that possibility. Ms. Bourassa's evidence does not provide Dr. McInnis with an alibi because she does not recall the time they met. For these reasons, we find Dr. McInnis returned to the Wasaga Beach clinic and made the call to Patient A at 4:52 p.m.

Patient A Setting Up Dr. McInnis

[187] A.B. was a patient of Dr. McInnis. He testified that in April or May 2019, he went to a trailer belonging to a man named Mike and snorted "hydromorphs." Patient A was there. A.B. testified that he told Patient A that he was on "hydromorphs" and needed to go higher. He told Patient A that Dr. McInnis was raising him up slowly and that it was hard for him. A.B. testified that Patient A said she wanted to go higher too, and that if Dr. McInnis did not increase her dose, she would accuse him of sexual abuse.

[188] A.B. testified further that he spoke to Patient A about Dr. McInnis at a Shoppers Drug Mart in Angus about 8-10 months before he gave evidence before the Tribunal. A.B. testified that he said to Patient A, "can you believe what happened to Dr. McInnis?" She responded, "yes, it happened because of me."

[189] A.B. made a statement to the College in May 2023. In that statement, he did not say anything about the incident in Mike's trailer.

[190] A.B. did not inform Dr. McInnis about Patient A's threat in 2019 and did not inform the College even though he was dealing with the College about accessing his chart in 2020, after Dr. McInnis's practice shut down. We find on a balance of probabilities that the threat was not made for a couple of reasons. First, in April 2019, Dr. McInnis was providing Patient A with hydromorphone. She did not need an increase of this drug and there was no reason for her to make the threat. Second, A.B. did not inform Dr. McInnis or the College of this threat. As recently as May 2023, he did not tell the College.

[191] We accept A.B.'s evidence that Patient A told him in 2023 that what happened to Dr. McInnis was because of her. That was true. The College began to investigate Dr. McInnis after receiving Patient A's allegations. A.B. interpreted Patient A's response to mean she was making false allegations. The fact that he interpreted them to be false does not make it so.

Findings of Sexual Abuse

i. Credibility of Patient A

[192] Patient A was consistent, unwavering, and detailed in her core allegations against Dr. McInnis. She had a clear memory of the dates of his attendance at her hotel, the exact pills and sometimes the number of pills on each visit together with a physical description of the pills. She described Dr. McInnis's movements at her hotel room and L's residence, where they were located relative to each other and the furniture in the room. Patient A's evidence of a sexual relationship with Dr. McInnis is supported by his CoverMe Messages and his call on April 26, 2019.

[193] We do not accept Patient A's evidence that Dr. McInnis said that he liked young girls and had abused an 11-year-old girl in Cuba. In cross-examination, she testified "for a doctor to walk into her room with needles, she had to turn it up because she wasn't buying it." Patient A may have believed she had to add an allegation of this nature in order to have her own allegations believed.

[194] There is no evidence before us that Dr. McInnis abused a young girl in Cuba. At best, the evidence is that he told Patient A that he had done so. This was made by Patient A at the eleventh hour because, in her words, she felt she had to "turn it up." We find that Patient A made up this evidence to bolster her own evidence.

[195] Dr. McInnis submitted Patient A is not credible and made the following arguments in support of that submission.

[196] Dr. McInnis suggested Patient A created a picture of herself as someone who did not use drugs before seeing Dr. McInnis, had no involvement with the Children's Aid Society, and had never been hospitalized for a drug overdose or hallucinations. We disagree. While Patient A disputed some of the propositions put to her in cross-examination about these matters, she did not contest the central facts: she has mental health issues; has been addicted to drugs since 2010 (long before she saw Dr. McInnis

in December 2018) and described it as a lifelong struggle; and has been involved with the Children's Aid Society.

[197] Dr. McInnis stated Patient A is not credible in part because she failed to tell the police about Dr. McInnis being at her hotel room on April 2, 2019. It is correct that Patient A did not tell the police about Dr. McInnis's attendance at her hotel on April 2. That is likely because she went to the OPP about the allegations from Patient B, not about her own allegations.

[198] Dr. McInnis suggested further that Patient A testified that Dr. McInnis retaliated against her after he gave his statement to the police by requiring her to take urine testing, releasing narcotics only to her mother, and ultimately cutting her off completely. While Patient A testified she did feel she was being punished at this time, she also acknowledged that it was probably a good thing that her mother was in control of her medication.

[199] Dr. McInnis suggested Patient A's evidence was not reliable given her history of drug use and stated her demeanour throughout her evidence was both erratic and bizarre and inconsistent with sobriety. During her testimony, Patient A was asked whether she was dealing with the effects of drug use and she said she felt great. In our view, Patient A's demeanour during her evidence was not erratic or bizarre and she did not appear to be intoxicated. We find a person with a drug addiction is able to give credible evidence.

[200] Dr. McInnis suggests Patient A's testimony regarding L should not be believed because there was no way she could dilute the hydromorphone pills in order to inject them while having intercourse. Patient A was asked this during cross-examination and she said "we were already using when he came into the house", she crushed the pills and put them in the syringe. She said there was water already in the syringe. Patient A also testified that it may not be believable in his (counsel's) world but it happened in her world.

[201] Dr. McInnis suggests that Patient A's assertion that he gave her drugs in exchange for sex is inherently improbable given he received little in return. He raises the question of why a physician would continually take the risk of supplying an addict with narcotics without receiving any benefit of any kind. He states there is no discernable

motive in this behaviour especially considering Dr. McInnis has faced discipline from the College before and was under the supervision of a practice monitor.

[202] We do not accept this submission. The evidence demonstrates that Dr. McInnis is someone who takes significant risks despite his disciplinary history and being under the supervision of a practice monitor. He took such risks with Patient E, Ms. X and Nurse C.

ii. Credibility of Dr. McInnis

[203] Dr. McInnis defends the April 2, 2019 allegations by saying he was on his way to a hockey game with his son. He was not truthful about his route home. He did not go directly home from the clinic. He travelled away from the direction of his home and gave no explanation as to why. He provided no explanation for the missing 20 minutes or so before he began to travel home, the amount of time that Patient A said he was at her hotel.

[204] His evidence about April 4, 2019 is not credible. Dr. McInnis testified that Patient A came to his office because her friend was at her hotel and was suicidal. Dr. McInnis did not go to the hotel immediately. Instead, he finished his work, gathered some literature, picked up his daughter, headed to the hotel, left his six-year-old daughter in the car, and then went to check on the suicidal friend. Dr. McInnis did not ask about suicidal intent or risk to assess the urgency of the situation as any professional would. It is not credible that he would respond to a call for a suicidal person in this way.

[205] Dr. McInnis denies any attendance at L's but did say in his interview with the police that he went to the personal residence of a transgender friend of Patient A's who was suicidal. During his evidence, Dr. McInnis said that it was a misunderstanding which he later corrected: there was only one visit for a suicidal man and that was at Patient A's hotel. Dr. McInnis was unable to explain the contradiction except to say his memory was not complete and he was giving his evidence from different pieces of his memory.

[206] We find that Dr. McInnis is not credible. He denied using the CoverMe app and we have found that he did. He denied making the call to Patient A on April 26, 2019 and we have found that he did. He denied his relationship with Ms. X and we have found this relationship existed. He denied his relationship with Nurse C and we have found this relationship existed. Dr. McInnis's denials adversely impact his overall credibility. More

specifically, they impact his credibility in relation to Patient A. We do not find his denial of a relationship with Patient A is credible.

[207] For these reasons, we accept the evidence of Patient A and find it is more likely than not that Dr. McInnis provided her with drugs on April 2, April 4 and at L's in exchange for sex. We do not accept her evidence that Dr. McInnis liked young girls. We find she embellished this evidence because she believed she had to "turn things up." She was mistaken in her belief. Although she is not credible about this allegation, she is credible about her core allegations relating to her relationship with Dr. McInnis.

Attempted Interference with College Investigation

[208] C.A. was a patient of Dr. McInnis. At his last appointment in November 2019, he went to Dr. McInnis to get paperwork filled out. He testified that at this appointment, Dr. McInnis asked him to do him a favour as a military brother. Dr. McInnis asked C.A. if he was willing to say that Dr. McInnis gave him a couple of pills to get by on. C.A. thought he said pain pills. C.A. became angry when Dr. McInnis made this request and Dr. McInnis then retracted it. C.A. testified that he does not take pain medication.

[209] Dr. McInnis testified that he asked C.A. whether he had ever provided him with acute treatment by providing him with office use medication. If he had, Dr. McInnis asked if he could document it. Dr. McInnis testified that at the time he asked this question, he was compiling a list of patients to whom he had dispensed office use mediation. He was creating the list at the request of the CPSO.

[210] We find on a balance of probabilities that Dr. McInnis asked C.A. to say he had received office use pain medication even though C.A. does not take pain pills and it is highly unlikely he would have received pain medication prescribed for office use. If he had received such medication, Dr. McInnis could have documented it in his chart. He did not need C.A.'s permission to do so. Dr. McInnis wanted C.A. to lie to the College and say he had received medication when he had not. In making this request, Dr. McInnis attempted to interfere with the College's investigation and engaged in disgraceful, dishonourable and unprofessional conduct.

CONCLUSION

[211] The College has established its allegations of professional misconduct against Dr. McInnis. A penalty hearing will be scheduled.

[212] Pursuant to s. 51(4.2) of the Code, the registrant's certificate of registration is suspended on an interim basis effective January 27, 2024 at 12:01 a.m. until our final order, given the nature of the sexual abuse we have found.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Citation: *College of Physicians and Surgeons of Ontario v. McInnis,* 2024 ONPSDT 15
Date: April 18, 2024
Tribunal File Nos.: 21-013 and 21-014

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

James Edward Roland McInnis

Registrant

PENALTY REASONS

Heard: March 20, 2024, by videoconference

Panel:

Jennifer Scott (chair)
Marie-Pierre Carpentier (physician)
Veronica Mohr (physician)
Peter Pielsticker (public)
Linda Robbins (public)

Appearances:
Emily Graham and Simmy Dhamrait-Sohi, for the College
Seth Weinstein and Christopher Lutes, for the registrant

RESTRICTION ON PUBLICATION

Pursuant to Rule 2.2.2 of the OPSDT Rules of Procedure and ss. 45-47 of the Health Professions Procedural Code, no one shall publish or broadcast the names of patients or any information that could identify patients or disclose patients' personal health information or health records referred to at a hearing or in any documents filed with the Tribunal. There may be significant fines for breaching this restriction.

Introduction

[1] The registrant, Dr. McInnis, was a family physician licensed to practise medicine in Ontario. By decision of the Inquiries, Complaints and Reports Committee (ICRC), Dr. McInnis closed his practice in November 2019. The ICRC referred allegations that Dr. McInnis committed misconduct to the Tribunal.

[2] In a decision released on January 26, 2024 (Decision), the Tribunal found Dr. McInnis sexually abused two patients, Patient A and his practice monitor Nurse C, and engaged in disgraceful, dishonourable or unprofessional conduct with Patient A, Patient E, Patient F and Nurse C. We also found Dr. McInnis failed to maintain the standard of practice of the profession and engaged in further disgraceful, dishonourable or unprofessional conduct when he attempted to interfere with the College's investigation.

[3] A hearing on penalty was scheduled for March 20, 2024. Two days before the penalty hearing, Dr. McInnis wrote to the Tribunal and advised that he was resigning his membership with the College and would not be attending the penalty hearing.

[4] The penalty hearing proceeded on March 20, 2024. While Dr. McInnis did not attend the penalty hearing, his counsel did. They advised the Tribunal that they were limited in what they could do in light of Dr. McInnis's non-attendance but would assist the panel in any way that they could. Counsel acknowledged the Tribunal continued to have jurisdiction and could proceed in Dr. McInnis's absence.

Penalty

[5] In the Decision, we found Dr. McInnis committed sexual abuse of two patients. There are mandatory penalties for a finding of sexual abuse of a patient. The Tribunal must reprimand the registrant and where the sexual abuse consists of certain kinds of

sexual conduct, including sexual intercourse, it must revoke the registrant's certificate of registration. Because the sexual abuse committed by Dr. McInnis included sexual intercourse, the revocation of his certificate is mandatory. See s. 51(5)(3) of the Health Professions Procedural Code (Code), Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c. 18.

[6] The Legislature has decided the penalty in this case. The mandatory penalty of revocation and reprimand reflects the serious nature of the misconduct. It sends a strong message that registrants who abuse their power and privilege for their own gratification cannot continue to have the privilege to practise medicine in Ontario.

[7] Dr. McInnis breached his professional obligations when he entered into sexual relationships with two patients, one of whom was also his practice monitor. These women were extremely vulnerable and their relationships with Dr. McInnis caused them significant and long-lasting harm. They were not the only women Dr. McInnis pursued. He had sexual relationships with two other women, Patient E, a former patient, and Ms. X, the fiancée of Patient F. Although these relationships did not constitute sexual abuse of a patient, they were disgraceful, dishonourable or unprofessional conduct on the part of Dr. McInnis. We have considered the impact statements of Patient A, Patient E and Nurse C.

[8] Section 85.7 of the Code requires the College to establish a program to provide funding for therapy and counselling for persons alleging sexual abuse by a registrant. The College is entitled to recover from the registrant money paid from this program. In this case, the College requests $35,880 for funding. Counsel for Dr. McInnis did not oppose this amount and the calculation for funding is set out by regulation. We order Dr. McInnis to reimburse the College $35,880 for funding provided for therapy and counselling under s. 85.7 of the Code.

Costs

[9] The College requests costs in the amount of $177,920. Counsel for Dr. McInnis did not oppose this amount as it was calculated under the tariff in the Rules of Procedure, and we made this order.

Order

[10] At the conclusion of the hearing, we made the following order:

1. The Tribunal requires the registrant to be reprimanded in writing.

2. The Tribunal directs the Registrar to revoke the registrant's certificate of registration effective 12:01 a.m. on March 21, 2024.

3. The Tribunal requires the registrant to pay the College costs of $177,920 by April 22, 2024.

4. The Tribunal requires the registrant to reimburse the College $35,880 for funding provided for therapy and counselling under s. 85.7 of the Code and to post security acceptable to the College to guarantee payment of these amounts.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

Tribunal File Nos.: 21-013 & 21-014

BETWEEN:

College of Physicians and Surgeons of Ontario

College

- and -

James Edward Roland McInnis

Registrant

The Tribunal delivered the following Reprimand in writing on Thursday, March 21, 2024.

*****NOT AN OFFICIAL TRANSCRIPT*****

Dr. McInnis,

We are deeply disturbed and disappointed by your egregious misconduct.

You have violated the trust of your patients in many ways.

You took advantage of a patient encounter to initiate a sexual relationship with a vulnerable patient. It was disgraceful, dishonourable, and unprofessional for you to use your clinical office as an opportunity to pursue a relationship with a patient. You did not consider the impact of such a relationship on their mental health.

You also engaged in a sexual relationship with your practice monitor, the very person appointed by the College to report on your practice, at a moment of extreme vulnerability. You abused your power, took advantage of her and your actions undermined her independence as a practice monitor and dissuaded her from reporting you to the College. Your behaviour was disgraceful, dishonourable, and unprofessional.

Additionally, you engaged in disgraceful, dishonourable, and unprofessional conduct when providing care to a patient while having an affair with his fiancée. You breached their trust by continuing to treat them and by not terminating the doctor-patient relationship when you decided to have a sexual relationship with their fiancée.

You also engaged in sexual abuse of a patient, exchanging sexual favours for prescription drugs, while continuing to provide them with medical care and once again abused your power by taking advantage of their vulnerability, leaving them feeling upset, and helpless, and destroying their trust in healthcare professionals. Your actions constitute sexual abuse, and your conduct is disgraceful, dishonourable, and unprofessional.

Finally, you failed to maintain the standards of practice of the profession and committed further disgraceful, dishonourable or unprofessional conduct by attempting to interfere with the College's investigation.

As a physician, engaging in a sexual relationship with a patient or using your clinical office to pursue a sexual relationship is a fundamental breach of professional ethics and boundaries. It violates the trust and integrity that should exist in the doctor-patient relationship and causes harm to the patient's well-being. We trust that you have carefully reviewed the patients' impact statements and that you will reflect on the ongoing serious consequences of your misconduct that they have shared.

Your repeated predatory behaviour and your lengthy history of enticing women for your own sexual gratification without considering the impact on these women is deeply disturbing. This reveals a complete lack of insight on your part. You have left your victims with permanent scars which still affect their lives daily.

This reprimand and the revocation of your certificate send a powerful message that we will not tolerate members who abuse their power and privilege for their own personal and sexual gratification and will serve as a message to others that sexual abuse will not be tolerated.