

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Marvin Sazant, this is notice that the Discipline Committee ordered pursuant to subsection 45(3) of the *Health Professions Procedural Code* (the “*Code*”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended that: no person shall publish the identity or information that could disclose the identity of patients whose medical records have been the subject of evidence; no person shall publish Dr. Sazant’s home address; and, that no person shall publish any information relating to any psychiatric or mental illness that may be disclosed relating to Dr. Sazant other than the date of the diagnosis and the fact of the diagnosis of any such illnesses.

The Committee also made an order to prohibit the publication of the identity of the complainant witnesses and any information that could disclose their identity pursuant to subsection 47(1) of the *Code*.

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

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

- i) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; and
- ii) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Indexed as: Sazant (Re)

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. MARVIN SAZANT

PANEL MEMBERS:

**DR. M. GABEL (Chair)
E. COLLINS
DR. C.J. CLAPPERTON
J. DHAWAN
DR. J. DOHERTY**

Hearing Dates:

**April 23 - 27, 2007
May 30, 2007
June 25, 27 and 29, 2007
July 9, 11, 12, 23 - 25 and 27, 2007
August 24, 2007
October 15 and 16, 2007
November 21 - 23, 2007
December 10 - 13, 2007
January 14 – 16 and 18, 2008
April 21 and 22, 2008
September 3 and 4, 2008**

Decision Release Date:

February 20, 2009

Release of Written Reasons:

February 20, 2009

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons (the “Committee”) heard this matter at Toronto on April 23 to 27, May 30, June 25, 27 and 29, July 9, 11, 12, 23 to 25 and 27, August 24, October 15, 16, November 21 to 23, December 10 to 13, 2007 and January 14 to 16, 18, April 21, 22, and September 3 and 4, 2008. At the conclusion of the hearing, the Committee reserved its decision on finding.

THE ALLEGATIONS

The Notice of Hearing as amended alleged that Dr. Marvin Sazant committed acts of professional misconduct:

1. under subsection 34(3)(c) of *The Medical Act*, R.S.O. 1970, c.268 in that he has been guilty of misconduct in a professional respect and paragraph 26.31 of Ontario Regulation 577/75 made under the *Health Disciplines Act* (“O. Reg. 577/75”) and paragraph 27.32 of Regulation 448 of the Revised Regulations of Ontario 1980 made under the *Health Disciplines Act* (“O. Reg. 448/80”) and paragraph 29.33 of Regulation 548 of the Revised Regulations of Ontario 1990 made under the *Health Disciplines Act* (“O. Reg. 548/90”) by conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.
2. under subsection 33(3)(c) of *The Medical Act*, R.S.O. 1960, c.234, as amended by S.O. 1962-63, c.80, s.1 and S.O. 1965, c. 69, s.3 and subsection 34(3)(c) of *The Medical Act*, R.S.O. 1970, c.268 in that he has been guilty of misconduct in a professional respect and paragraph 26.28 of O. Reg. 577/75 and paragraph 27.29 of Ontario Regulation 448/80 and paragraph 29.30 of Ontario Regulation 548/90 in that he engaged in sexual impropriety with patients.

RESPONSE TO THE ALLEGATIONS

Dr. Sazant denied the allegations set out in the Notice of Hearing, as amended.

FACTS AND EVIDENCE

Overview of the Case

This case is about four men who allege that they were subject to inappropriate sexual conduct by Dr. Sazant when they were ages 8 to 14 or 15, during the years 1970 to 1991. One complainant came forward to the police in 1991. Another case did not come to light until 1998, when one of the men reported allegations. Two others later presented themselves to the police when they heard in the media about Dr. Sazant facing criminal charges of a sexual nature. Despite not knowing each other or the details of each other's allegations, three of the boys described being tied up with ropes, and Dr. Sazant admitted that he used ropes to tie up one of the boys. He admitted, in another instance, that one of the boys tied him to the bed. The allegations range from fondling to masturbation and forced oral sex. Once charges proceeded through the criminal system, where they were either withdrawn or stayed, the College proceeded with a discipline case against Dr. Sazant. The Committee is aware that "sexual abuse" has a specific meaning under the *Regulated Health Professions Act, 1991* and that Dr. Sazant is not facing allegations of "sexual abuse". The Committee sometimes uses this term in the colloquial sense to describe improper activities of a sexual nature involving a physician, but focuses on the specific allegations in the Amended Notice of Hearing regarding each of the complainants.

Dr. Sazant

Dr. Sazant was 72 years old at the time of his testimony before the Committee. His father passed away when he was 3 and his mother raised him and his brother. He lived in a small bungalow in the Wilson Avenue and Bathurst Street area of Toronto with his mother, until she died in 1982 at age 79. In 1989, he moved to a multi-level house in the Downsview area of Toronto. Three of the alleged incidents occurred in the bungalow with the latest one, in 1991, allegedly occurring in the multi-level house.

Dr. Sazant put himself through university with bursaries and awards and by working in a pharmacy. After graduating from the University of Toronto in Medicine in 1961, Dr. Sazant did a year-long internship and then a year residency and, following that, he set up a general medical practice. He has maintained his practice for 43 years. Most of his patients have his home phone number and may call or show up at his home and he also does house calls, in addition to maintaining regular office hours.

Dr. Sazant described the location and lay-outs of the various medical offices he has had over the years, including the Raxlen Clinic on Parliament Street, another office at Euclid and College Street and another one at Lawrence and Bathurst Street.

Outline

The Committee's decision and reasons is presented in the following format in relation to each of the complainants:

- Allegations of the complainant
- Evidence of the complainant
- Evidence of Dr. Sazant
- Evidence of other witnesses
- Assessment of credibility of the witnesses
- Findings and Legal Issues
- Other Legal Issues
- Summary

In considering the credibility of the complainants and the other witnesses, the Committee assessed their evidence by asking:

- i) Did the evidence make sense?
- ii) Was the evidence reasonable?
- iii) Was the evidence plausible?
- iv) Was there any internal inconsistency in the witness' oral testimony?

- v) Was there any inconsistency between his or her oral testimony and the documentary evidence?
- vi) Was there any motivation to be other than truthful such as having an interest in the outcome of the proceeding?
- vii) Did the witness have any memory impairment?
- viii) Did the witness tend to exaggerate?

(1) Allegations regarding Mr. D

Dr. Sazant is alleged to have engaged in disgraceful, dishonourable or unprofessional acts with Mr. D in 1991, when Mr. D was 12 years old, including tying Mr. D to a bed and hitting him with a belt, having Mr. D tie him to a bed, touching Mr. D's penis, and providing him with alcohol.

Evidence of Mr. D

At the time of his testimony, Mr. D was a 28 year-old man who worked as a security guard. He had not done particularly well at school, having repeated grades, and he had held a variety of jobs over the years. Previously, he had been conditionally discharged for a domestic assault conviction, for which he had spent a year in a domestic violence program. At the time of the hearing, he was living with the victim of that assault, although as "friends", and not romantic or common-law partners.

As a child, Mr. D lived with his mother who worked as a clerk, and was a single mom. At some time prior to the alleged incidents with Dr Sazant, Mr. D's aunt (Ms. O) and her boyfriend and child came to live with them. At the time of his association with the doctor, Mr. D weighed about 80 pounds and was a little over 5 feet tall.

Mr. D met the physician through another friend of his, Mr. M, in the fall of 1990 when he was in grade seven. Dr. Sazant's home was near the school that they attended and both boys visited his home a few times a week. While there, they would talk about sports, watch TV and play video games. Neither Mr. D's mother nor his aunt, Ms. O, knew he was going to the doctor's home.

Sometimes, Mr. D did jobs for Dr. Sazant, for which he would receive a dollar. However, one time, he recalls the physician giving him five dollars when he took him to a local mall. On that trip, the doctor told him not to tell anyone he was going to his house. Mr. D believed that Dr. Sazant told him that so he would not bring any more children to the house, as he had already invited another boy, Mr. N, who also came to his house. On another occasion, he brought another boy, as well.

In April or May of the first school year that he attended the doctor's home, Dr. Sazant began tickling Mr. D. The other two boys were tickled too, although Mr. D said he was the only one tickled on the inner thighs as well as the sides of his body.

He didn't see Dr. Sazant throughout the summer but, when his grade 8 school-year started, he began going to the doctor's house with Mr. N again. Mr. M had moved away during the summer. He does not recall being there with other children. Occasionally, Dr. Sazant would give the boys Tahiti Treat (pop) to drink.

The tickling began again shortly after the school year started. During one of the tickling sessions, Dr. Sazant put his hand on his back and rubbed it under his shirt. During his testimony on this point, Mr. D blushed. Dr. Sazant afterwards asked if he was okay. He reported that he said, "yes", although he felt uncomfortable with this act.

One day in October, Dr. Sazant greeted them at the door in his shorts and undershirt, as he sometimes did. On this occasion, Mr. D and Mr. N tied Dr. Sazant to the bed, although Mr. D had no recollection of how this came about or whose idea it was. Mr. D took white ropes from Dr. Sazant's dresser in order to tie his feet and hands to the bedposts. They then tickled the doctor. Dr. Sazant offered coolers, an alcoholic beverage, from a fridge in the bedroom to the boys while he was tied up. Mr. D gave the doctor a large portion of a cooler by pouring it in his mouth while he was tied. Mr. N finished his cooler while Mr. D drank a very little bit. Dr. Sazant was tied to the bed for

about half an hour and, when they heard the first bell signaling the end of the lunch break, they untied Dr. Sazant and returned to school.

About a week later on another visit to Dr. Sazant's house, Dr. Sazant pulled Mr. D onto his lap, began tickling him and then put his hand down his track pants and fondled his penis for 10 to 20 seconds. He said he felt "weird" and "uncomfortable" but did not say anything. He continued to go to the doctor's home until the end of November.

In November, 1991, during a professional development day at school, he and Mr. N went to the doctor's home first thing in the morning. He shoveled the walk before Mr. N arrived and then they played video games for about 30 to 45 minutes. After that, they went to the doctor's bedroom and tied him to the bed again. Mr. D recounted that the doctor laid face down on the bed and they tied his hands and feet to the bedposts with ropes they got from the dresser. They had coolers again at Mr. N's suggestion and Mr. D gave Dr. Sazant his drink, as he turned his head to the right while still being tied up.

The boys tickled Dr. Sazant and he laughed and he would say "stop" but Mr. D said he didn't think he wanted them to stop. Mr. D found a belt on the top of the dresser and pretended to hit Dr. Sazant lightly with it on the back of his legs. At the end of about 45 minutes, Mr. N told Mr. D that it was his turn to lie down and they untied Dr. Sazant and Mr. D lay on the bed, face up. As he was too short for the ropes to reach the bedposts, they tied his hands to the handles on the mattress and his feet to the bedposts. Dr. Sazant then tickled him, gave him the cooler and lightly hit him with the belt. At one point, Dr. Sazant hit him accidentally with the buckle of the belt and that hurt. However, Mr. D thought they were having fun.

After being tied up for about 30 to 45 minutes, Dr. Sazant drove them to a sports cards store in a plaza where he bought the boys a Blue Jays book and wrestling magazines. Mr. D recalls that Mr. N went home and Dr. Sazant took him out to lunch at the Mandarin Restaurant. When they returned to Dr. Sazant's home, he found out his aunt was looking for him. She had discovered that there was no school that day and called the police when

she couldn't find him. Mr. D subsequently told her and the police about what had transpired at the home of Dr. Sazant.

Mr. D said he never met a housekeeper when he was at Dr. Sazant's home.

Mr. D was interviewed by the police in December, 1991 and, after that, never heard from the police again until 1998, when he was interviewed again. Nor did he see Dr. Sazant again. In fact, he said he never knew the doctor's last name and, when the police contacted him in 1998 about Dr. Sazant, he did not know whom they were talking about. When he was interviewed by the police in 1998, he did not report being tied up by Dr. Sazant.

Evidence of Dr. Sazant regarding Mr. D

Dr. Sazant admitted to tickling the boys who visited him and saw it as a type of bonding between the boys and him. He denied that he ever touched Mr. D on his penis, although he did acknowledge pulling him onto his lap and tickling him. He also denied tickling him on the inner thigh but he did say that he tickled the boy's knee. He does not recall whether or not he touched Mr. D's bare back as the complainant described, however, he said it "may" have happened.

Dr. Sazant denied being tied up in October. However, with regard to the incident in November, 1991, Dr. Sazant said that the boys tied him up after he found the boys on his bed in his bedroom. The doctor said, in examination-in-chief, that the two boys pushed him on the bed but, during cross-examination, he said that one of them pushed him on the bed and playfully tied him to the bed after play-wrestling for a minute. Dr. Sazant denied giving the boys Wildberry coolers. Dr. Sazant said he noticed the Wildberry bottle when he was untied but, in later testimony, said he noticed it a day or two later and wasn't sure if he had consumed it himself. He claimed he was only tied up for 5 or 10 minutes and that Mr. D's report of hitting him lightly on the legs with a belt did not happen. He said there was nothing inappropriate about being tied up by Mr. N and Mr. D as, "...it was

just part of play-wrestling.” He also denied tying up Mr. D. He also reported that he was fully dressed at the time of this incident.

He also said that the 11 and 12 year-old boys were “persuasive” in asking for their friends to join them at his house and that he could not say no to them.

He reported that Mr. D’s aunt called the school under a false pretense that she had forgotten that the boy had a doctor’s appointment that day. When the school official told her that it was a professional development day and that they had seen Mr. D shoveling snow in front of Dr. Sazant’s house, she had an excuse to go to Dr. Sazant’s house. The doctor maintained that the confrontation of him by Ms. O and the contacting of the police was a conspiracy on her part to investigate him and get him in trouble in respect to her nephew, Mr. D, even though there was no evidence that she had ever met him before.

Dr. Sazant said that he and the children did not consider the age differential in their friendship and that they saw him as one of their friends and as youthful. He said he did not see an age differential psychologically/emotionally between himself and the 11 and 12 year-old boys. He said the boys saw him as youthful and “...they saw me as being someone equivalent within their age group as a friend, without that huge age differential that you’re talking about.”

Other Evidence Regarding Mr. D’s Allegation

In December, 1991, after interviewing Mr. D and Mr. N in connection with Ms. O’s complaint, the Toronto Police executed a search warrant at the home of Dr. Sazant. Four officers searched the home and testified before the panel about what they found, based on their notes and memory of the search.

Mr. P, then Detective Constable P, searched the upstairs bedroom and found pieces of white cotton rope in 2 to 3 foot lengths. He also seized video games.

Mr. Q, then Detective Constable Q, saw marks on the sheets in the bedroom consistent with spilled Wildberry cooler drink and saw some whole bottles of Wildberry cooler in a small fridge. Dr. Sazant said that, “everything in the house is mine and belongs to me.” The doctor also said that he did not give the children Wildberry cooler but they might have had some and spilled it.

Mr. R, then Detective R, was involved in searching the bedroom, where he found bondage magazines with ads to order bondage material, a bag inside the closet containing rope, another bag containing four belts and another bag with rope.

Detective Constable S was the exhibits officer and he recorded that Mr. Q seized an empty box of Wildberry coolers from a fridge in the bedroom and a bag containing blue and white nylon twine looped at one end that had been in the bottom of the dresser. He also noted the seizure of two bags of assorted rope and various belts. He also noted statements Dr. Sazant made while the officers were searching. When Officer Q asked, “No tying up? No belts?”, Dr. Sazant replied, “I have to ask them.”

The Committee also heard evidence that, although the police never laid charges against Dr. Sazant in the Mr. D matter, Dr. Sazant entered into an undertaking with the Crown, under which he would participate in counseling for two years and not see children under 16 years of age in his office without a chaperone. The Committee drew no inference from the undertaking that Dr. Sazant committed any of the acts.

Evidence of Ms. T

Ms. T worked for Dr. Sazant two or three times a week beginning in 1991, although she also said she worked for him beginning about 1994 on at least two occasions; her evidence was not clear on this point. Ms. T claimed she was born in 1929 and, after she retired from working for Dr. Sazant’s relatives, at the age of 65, she went to work for the doctor. She related that she saw Mr. D, whom she called [**deleted**], at Dr. Sazant’s at lunch time and recess for “a lot of years”. She reported that, one time, she saw him hitting a tree with a shovel and, when she told him to stop, he threw an apple or stone at

her and, later when he was reprimanded for this, he blamed Mr. N. She didn't like the way Mr. D treated her as he would call her "woman" or [**deleted**] and she considered him disrespectful. She said that Dr. Sazant never engaged much with the children and would work on his papers in the dining room. She never saw him doing anything inappropriate with the children. Dr. Sazant gave the children pop and candy and also bought a video game for them to use. She also said there were a lot of ropes in the house that Dr. Sazant would use for tying up newspapers. She denied there was a refrigerator in Dr. Sazant's bedroom. She also acknowledged that she had a high regard for Dr. Sazant and would do anything for him. Ms. T was also Dr. Sazant's patient.

Evidence of Mr. M

Mr. M was a friend of Mr. D's and he brought Mr. D to Dr. Sazant's home for the first time. He had approached Dr. Sazant one day in the park to pet his dog and, when they met on another occasion, Mr. M offered to walk the dog. His father was subsequently involved in the arrangement whereby Mr. M would walk the dog for a fee. He confirmed that the children spent time at Dr. Sazant's home during the school year, although he had moved away and was not present for the second school year of their contact.

Credibility of Mr. D

Mr. D gave his evidence in a very straightforward fashion and at no time did he show any animosity towards Dr. Sazant. He described their tying up and tickling activity as fun. He was forthright about a past conviction as well as a misunderstanding related to a suspension from a job that he was reinstated to. The Committee did not see any evidence of dishonesty, given his plausible explanation.

The Committee was of the view that his evidence made sense and was reasonable and plausible. No evidence of exaggeration was found and, when he could not remember something, he admitted it, rather than trying to speculate or make up an answer.

Although the Committee heard evidence that the College investigator made a note that, in 1991, the police thought Mr. D was a liar, the Committee found him to be truthful. The

findings made during the search in fact support Mr. D's version of events with evidence of ropes in pre-cut lengths, a stain consistent with a spilled cooler on the bedsheets, a fridge containing coolers, a bag with four belts in the closet and bondage magazines being found. A police officer also noted that, during the search of Dr. Sazant's home, when Officer Q asked, "No tying up? No belts?", Dr. Sazant replied, "I have to ask them."

The Committee found no evidence to support the suggestion of a "conspiracy" to get Dr. Sazant in trouble.

Credibility of Dr. Sazant

Dr. Sazant was much less than forthright in his response to questions. He used his time on the stand to engage in "impression management", in the Committee's view, and was repeatedly casting himself in a positive light as a passive player in the scenarios involving the children. His claims that he didn't want Mr. D in his house along with Mr. M, but couldn't say no to the boys because they were "persuasive", and that they were "friends" and he "couldn't say no to a friend," are not credible. The Committee found that Dr. Sazant repeatedly did not answer the questions put to him but instead would insert what the complainant had allegedly said on another time or even during their testimony.

The evidence presented by Dr. Sazant was not reasonable in the Committee's view. His claim that Ms. O's call to the police was a conspiracy to get him in trouble with the police was frankly bizarre. His attempt to cast her actions in a sinister light reveals a disconnection in his thinking between what a concerned caregiver might do in such a scenario and his own self-centered interests. He did not see it as an appropriate response of someone who did not know the whereabouts of a child in their care.

Dr. Sazant did not think that there was any problem with the child's mother not knowing he was coming to his house. His thinking in this regard is belied by his testimony at other times when it was clear that he had regard for the propriety of seeing children alone in his office and stated that he never saw children without their parents.

His version of events changed during his testimony. On one occasion, he noticed the cooler there when he was untied and another time a little later saying he noticed it a couple of days later. His version of how he ended up on the bed varied as well, with one boy pushing him on one occasion, and both boys at another time in his testimony at the hearing. His version of events was not internally consistent or plausible.

Evidence of Other Witnesses

Ms. T admitted she would do anything for Dr. Sazant. She had a very poor memory for when she started her employment with Dr. Sazant, saying 1991 at one time and 1994 other times. If it was the latter, it was long after the alleged events. Although she had a poor memory for some things, she had a remarkably good one for several points that enhanced Dr. Sazant's version, for example: casting Mr. D as the one who threw a rock or apple at her and then blaming his friend; saying the doctor did not interact with the boys when he clearly admits that he did; and, stating that the doctor used ropes to tie his newspapers but not noticing that he had a fridge in his bedroom containing coolers. The Committee did not place a lot of weight on her testimony given the selective nature of her memory.

The four police officers who executed the search warrant of Dr. Sazant's home used their notes made at the time to refresh their recollections. The Committee accepted their testimony.

Mr. M was credible and straightforward in his testimony and the Committee accepted his testimony.

Legal Issues and Findings

The Committee understands that the burden of proof is on the College, and that the standard of proof is on a balance of probabilities. The allegations are serious and the Committee considered whether the allegations had been proved to the *Bernstein* standard, *i.e.*, proof requires evidence that is clear, cogent and convincing and accepted by the

Committee. The Committee believes the evidence relating to the allegations of Mr. D met this test.

The Committee concluded that Mr. D's version of events was credible. His straightforward account was without embellishment, and the findings of the police who searched Dr. Sazant's home, corroborated his story. Several ropes were found in Dr. Sazant's home in various locations in his bedroom. That fact, along with the bondage magazines, and Mr. D's report of tying up Dr. Sazant, and being tied up by him, as well as Dr. Sazant's admission that he did allow himself to be tied up by the boys, supports that Mr. D was telling the truth. Dr. Sazant did not deny taking Mr. D to a mall and buying him magazines as well as lunch. The Committee also believes Mr. D's version of events, that his penis was fondled for 10 to 20 seconds and that he was also tied up and hit with a belt.

Dr. Sazant's version of what happened varied. His evidence was not credible and his tendency to try to undermine Mr. D's testimony by bringing in other statements of his, rather than answer the questions being put to him, diminished his credibility. His attempt to explain why there was a conspiracy against him as a motive for Mr. D's complaint to the police did not enhance his credibility either.

The Committee does not view the tying up of Dr. Sazant or his tying up of Mr. D as a benign play activity. That Mr. D, a child of 12, saw it that way is beside the point. The finding of a magazine depicting bondage with ads in which bondage material could be ordered, the finding in the bedroom of pre-cut ropes with loops at the end, the tying up of the doctor and the child to the bed, and the use of play activity that fostered trust and served as a prelude to more intrusive sexual activity, as well as the use of tickling and simple touching to gauge the "responsiveness" or lack of boundaries or openness of the boys all lead to the conclusion that this activity was planned and orchestrated on the part of Dr. Sazant and was part of sexual activity (whether this young boy saw it that way or not). Dr. Sazant minimized the effect of tickling, play-wrestling and tying up on impressionable boys, who were in the early stages of sexual development, as part of

“play”. Even his thinking distortions enabled him to justify his activities. He saw himself as the same age as the boys psychologically and emotionally. There was no age differential in his view. He saw the boys as being active initiators in pushing him on the bed and “persuasive” in their actions, thereby absolving himself of taking responsibility in this scenario when he was, in fact, the adult with a great deal of power and control.

Because Mr. D was not a patient of Dr. Sazant, his counsel argues that the allegations under the *Health Discipline Act* of professional misconduct relevant to the practice of medicine do not apply. She argued that Dr. Sazant cannot be found to have committed professional misconduct in respect of these allegations. She maintains that a 10 second touch of Mr. D’s penis, having regard to all the circumstances, including the fact that the allegations are not relevant to Dr. Sazant’s longstanding and excellent practice of medicine, would not be found to constitute disgraceful, dishonourable and unprofessional conduct. She also notes that no expert testimony was presented that would serve to guide the Committee on the point of professional misconduct nor on the fact of any “grooming” activity.

She notes that the Health Professions Procedural Code explicitly defines sexual abuse of patients and it does not address the sexual activities between members and non-patients as they are part of the private sphere of a doctor’s professional life. She submitted that the College may only look at the private activities of a member if there is a finding of guilt against a member in a court of law, and only then if such conduct is relevant to the member’s suitability to practice. She went on to say that non-patients do not fall within the College’s mandate and submitted that, given the absence of findings of guilt in the criminal sphere, the Committee cannot make findings of professional misconduct against Dr. Sazant in respect of the allegations of Mr. D, who was not a patient.

She submitted that the Law Society of Upper Canada, in dealing with the discipline of lawyers, does not consider deviant social or sexual behaviour that has no bearing on a lawyer’s trustworthiness or fitness to practice. The activities of tickling, tying to a bed and play wrestling are not activities that the discipline panel can adjudicate on. No

criminal charges would ever have been laid in respect of these activities and the fact that some individuals choose to engage in these activities does not impact on their fitness to practise medicine and are in no way “relevant to the practice of medicine.”

The Committee disagrees. When a doctor is engaged in activity that is sexual in nature with a child, whether a patient or not, the conduct is certainly captured under s. 29.33 of O.Reg. 548 of the *Health Disciplines Act* as disgraceful, dishonourable or unprofessional conduct. Non-patients, under the age of consent, that is, children, do fall under the College’s mandate as the public has an interest in knowing that those doctors who abuse children are not allowed access to vulnerable children for further abuse or use for their own selfish interests. Dr. Sazant’s sexual orientation or activities with consenting adults or those with whom he is not in a position of power do not fall under the mandate of the College, but when his behaviour causes harm to children, the College and its members do have an interest, whether or not a criminal conviction has been sought or found. Thus, his conduct is relevant to the practice of medicine as children form part of his practice (with the exception of the last few years when the doctor had an undertaking with the College to not see children under the age of 16 in his office). A doctor engaged in such activities with a child is different from a lawyer who would not see a vulnerable child alone without a parent or advocate and would not have occasion to be examining their body in an intimate way as a doctor may be required to do. The Committee rejects any comparison with the professional responsibilities of lawyers as being irrelevant to the case at hand.

In *A Complete Guide to the Regulated Health Professions Act*, Richard Steinecke writes that, historically, “unprofessional conduct” was not defined, but that a definition was developed as a catch-all provision for most colleges and covers conduct that would reasonably be regarded by members as dishonourable, disgraceful or unprofessional. It is broad in its scope and assumes a consensus within the profession that certain types of conduct are unacceptable for members. “Members are judged according to that consensus and not on the private views of the discipline committee.” The catch-all provision serves to reflect the values of the profession. It is the members of the

profession who best understand the circumstances in which practitioners operate. Expert evidence is not needed to establish that the conduct is unprofessional. In the case of *Davies v. Ontario College of Pharmacists*, several cases are cited that support this conclusion with respect to assessments of disgraceful, dishonourable or unprofessional conduct.

The courts have similarly addressed what constitutes unprofessional conduct. Several cases cited in *Squires v. College of Physicians and Surgeons of Saskatchewan* elucidate this point. In *Council of Professional Engineers of British Columbia and Patmore*, [1963] 42 W.W.R. 598 at page 603:

In applying this test, it should be borne in mind that the conduct complained of, although not in the carrying out of professional duties may so derogate from professional capacity as to amount to unprofessional conduct.

An English case involving a veterinarian was endorsed in *Squires* as his conduct was found all the more egregious because of his professional status:

If, of course, the conduct complained of is equally reprehensible in any one, whether a professional man or not, as for example, conduct constituting some traffic offence, that conduct would not come within the expression. If the conduct, however, though reprehensible in anyone it is in the case of the professional man so much more reprehensible as to be defined as disgraceful, it seems to me that it may, depending on the circumstances, amount to conduct disgraceful to him in a professional respect in the sense that it tends to bring disgrace on the profession, which he practices. It seems to me, though I do, not put this, forward in any sense as a definition that the conception of conduct which is disgraceful to a man in his professional capacity is conduct disgraceful to him as reflecting on his profession, or, in the present case, conduct disgraceful to him as a practicing veterinary surgeon.

In *Samuels v. Council of College of Physicians and Surgeons of Saskatchewan*, [1966] 57 W.W.R. 385 at page 391, the court said:

The standard to be applied in determining whether the circumstances of a case are such as to bring it within the ambit of section 41...is what may be reasonably be so regarded by a discipline committee of members of the profession for, as Lord

Upjohn said in *McCoan v. General Medical Council*, [1964] 3 All E.R. 143 at 147 ‘they know and appreciate better than anyone else the standards which responsible medical opinion demands of its own profession’.

In summary, the Committee is the body that the courts, historically and currently, have said are the arbiters of what constitutes unprofessional conduct. No expert testimony is required as the members themselves understand more than anyone what the profession would consider outside the realm of acceptable behaviour and to be unprofessional.

Summary

The Committee finds Dr. Sazant to have committed professional misconduct in his acts of tying up Mr. D when he was 12 years old, hitting him with a belt, having Mr. D tie him to a bed, touching Mr. D’s penis and providing him with alcohol. His behaviour reflects not only on himself, but on the profession as a whole, and the Committee finds that his acts would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

(2) Allegations Regarding Patient A

It is alleged that Dr. Sazant engaged in misconduct in a professional respect, acts of sexual impropriety and disgraceful, dishonourable or unprofessional conduct with Patient A, a patient, in his home and office between approximately 1972 and 1978. It is alleged that Dr. Sazant rubbed Patient A’s legs, kissed and hugged him, rubbed his testicles, tied him to a bed, gave him gifts, rubbed Patient A’s leg with his penis, rubbed Patient A’s stomach with his hands and ejaculated on Patient A.

Evidence of Patient A

Patient A was 43 years old when he testified before the panel on two occasions, two and a-half months apart. He grew up in Toronto with his parents as the youngest member of a large family. For much of his childhood, his parents received disability or welfare payments as their sole source of income. Dr. Sazant was their family doctor and would sign the forms for their government assistance.

Patient A currently lives on the East Coast of Canada with his wife, whom he married in 1985. They have three children. He has a grade 12 education from a vocational school and reads at a grade 4 or 5 level. He is unable to read complicated documents on his own and relies on his wife to do the paperwork for the family.

Patient A had several jobs over the years but they were terminated either because of workplace injuries, his quitting the job, or the company closed. At the time of his testimony, he was receiving disability benefits. He has been on some form of disability or family benefits since 1995. Since about 2000 or 2001, he said those benefits have been because of anxiety, depression and flashbacks pertaining to the incidents with Dr. Sazant.

In the late 1990's, he related that he took out a loan and had other credit on which he defaulted.

He reported that his parents took him and his sister, Ms. K, along when they went for their monthly visits with Dr. Sazant. His first recollection is of seeing Dr. Sazant at the Raxlen Clinic on Parliament Street when he was about 6 or 7 years old. At another point in his testimony, he said that his memories begin at about age 8. At every appointment, Dr. Sazant would give all of the family a hug and kiss and would kiss Patient A on the lips and then set him on his knee. He had a little fridge in the office and would offer him a pop. Sometimes at the end of the appointment, he would write as a joke a prescription for vitamins or a chocolate bar that Patient A would then take to the drugstore downstairs.

He recalls when sitting on Dr. Sazant's lap, the doctor would rub his upper thighs and, after a few minutes, would sit with his arms around him.

His parents thought Dr. Sazant was a "super guy" and, besides seeing him at the office monthly, they often invited him to their home for a noon meal on Sundays. He came to their house from the time Patient A was about 9 or 10 until he was about 14. Dr Sazant

usually brought a gift, sometimes a fruit basket or a pie. He also brought his black bag and always checked his parents' blood pressure and listened to their chests.

When Patient A was about 8 years old, Dr. Sazant asked Patient A's father while at Dr. Sazant's office to bring him back later so that Dr. Sazant could take them both to a boxing match. Patient A subsequently went on other outings alone with the physician until he was about 14, to the Science Center, the Canadian National Exhibition, a museum and hockey games.

Patient A also recounted going to Dr. Sazant's home from the time he was 8 years old and subsequent encounters occurred in a similar way. Dr. Sazant would take him there on Sundays and sometimes after a visit or excursion elsewhere. He said that the doctor held his hand and walked him into the house. Dr. Sazant's mother would be in the living room knitting or sewing and he would go and speak to her first. He would introduce Patient A and then tell her that he brought the boy to clean, vacuum or to play pool and would take him downstairs where there was a large room with a pool table and a bed.

Patient A recalled that the doctor suggested that he sit down on the bed and take off his shirt as they were going to play a little game. The doctor retreated to the bathroom and then sat beside him on the bed and asked him to remove his trousers. He asked him to move up the bed, as they had been sitting near the footboard, and lie down. Dr. Sazant went to the bathroom again and returned wearing no shirt and he said again, "I want to play a game". The doctor pulled out a white shoe-box from under the bed and took out white ropes that were looped on both ends. He put the boy's hands through the loops and put the loops on the two posts of the headboard with the boy's arms outstretched over his head. The loops were already in the ropes so that pulling on them would tighten the loops. The doctor retreated to the bathroom again and came out with his underwear on. He put some white lotion on the side of his thigh and then he lay on the bed beside Patient A. Dr. Sazant rubbed his penis up and down on the side of the boy's thigh while touching the boy's penis and testicles. During this time, he said he loved him and would

moan and groan. Patient A testified that he was “terrified”, as he didn’t know at the time “what the heck was going on”.

He recalled an “awful smell” and, years later, he realized that Dr. Sazant ejaculated during these episodes. He would then be driven home after a stop to pick up a Kids meal at McDonalds or something to eat on the way home.

Patient A recalled that he used to go out with Dr. Sazant two to three times a month and that sometimes Dr. Sazant would tell the parents that he was going to take him out to buy him a piece of hockey equipment. Patient A usually played hockey on Sundays and, sometimes, Dr. Sazant would take him to his game and hold his hand in the car on the way there and back. They always ended up at the doctor’s home, however.

Patient A recalls sometimes lying on his back, and sometimes on his stomach when he was tied up but it was always basically the same. Dr. Sazant always tied him up with ropes and always told him he loved him. These incidents continued until he was about 14, almost 15, when he met his wife.

When he was about 11 or 12, Dr. Sazant would take him to get a pop in a little room to the side of his office during the family visits and would grab him from behind, hug him and push his groin against him from behind. He said he felt Dr. Sazant had an erection.

He recounted an incident when he had a cast on his leg at about the age of 12 or 13 and Dr. Sazant took him to the examining table behind the curtain, pulled his pants down and rubbed his testicles behind the curtain while moaning and groaning and saying, “I love you.”

When Patient A met his future wife at the age of 14, the sexual incidents with Dr. Sazant stopped.

He never told Dr. Sazant to stop as he was “terrified”. He said that the doctor used to do judo and he brought boards out of the back room at his office and would break them in front of him and his parents during the office visit and say, “Nobody messes with me.” He never told his parents of the incidents, as they looked up to Dr. Sazant “like he would have never did nothing wrong.” He told his sister on one occasion when she commented on why he was getting so much “stuff” from the doctor and he said, “Well, if you were tied to the bed, you would get that stuff too.” He never elaborated to her about the comment.

Patient A explained that he could not tell his parents as they would have asked a lot of questions and he wasn’t prepared to answer them. “I didn’t even know how to approach the situation,” he said. He admitted that he felt full of shame and that he couldn’t face anybody and thought that it was his own fault. He agreed that he gave Dr. Sazant gifts, such as things he made in shop class and other items which Dr. Sazant kept and many years later filed as exhibits at the hearing. Dr. Sazant gave him various gifts over the years as well. Some of the gifts were bought on his outings and once he was taken to a sports store to get hockey equipment.

When he was married, Patient A’s mother invited Dr. Sazant to the wedding. He stated that if he had told his mother he didn’t want Dr. Sazant coming to the wedding, he would have had to explain why and he wasn’t ready to talk about Dr. Sazant’s abuse.

Despite moving outside Toronto after he was married, and having his own family doctor, Patient A continued to see Dr. Sazant on a regular basis, often with his wife and sometimes with his newborn son. Dr. Sazant would occasionally call him and ask him to come and bring his son with him.

The last time he saw Dr. Sazant was when he was moving with his family to the East Coast in 1994. Dr. Sazant approached him as Patient A was sitting outside his office smoking a cigarette and asked him if he knew who was phoning him and calling him a “queer” and a “faggot”. He then recounted that Dr. Sazant pulled a wedding picture of

him out of his pocket and asked him, “Have I ever stuck it in you?” Dr. Sazant was upset and mad, he said. After Dr Sazant handed him his files to take with him to the East Coast, he did not see the doctor again. He admits that his wife sent Dr. Sazant a thank-you card with a note saying thank you for all he had done for them shortly after they moved.

He said that Dr. Sazant continued to call his family to see how things were going and they exchanged Christmas cards. The doctor sent birthday cards and Christmas cards and usually would send money, 50 or 100 dollars and, occasionally, a gift certificate for Eaton’s. His wife, Ms. J, sent Christmas cards to Dr. Sazant from the family and would send school photos of the kids, signed by the children.

When his children were about the age he was at the time of the incidents with Dr. Sazant, Patient A related that he thought it was time to get the abuse off of his shoulders. He didn’t want his own kids seeing that he did nothing about what happened to him and that it was “...time to come out and tell what he did to me by damaging me from being an innocent little kid.” He went on to say, “I was hoping that some kind of a sorry or something guilty where...why. Like for him to admit that he’s had a - he’s got a problem when it comes to young kids.” Patient A decided to send a letter to Dr. Sazant. He acknowledged that his wife wrote the letter, but he decided what she should write.

In his letter written in December 1997 to Dr. Sazant, Patient A said that the doctor sexually abused him and scarred him for life. He referred to the fact that Dr. Sazant sent birthday and Christmas presents but that wouldn’t pay for the pain. He related how his parents thought Dr. Sazant was the best and would be disappointed to know that the doctor had sexually assaulted their youngest son. After saying he was paying a high price every day of his life, he wanted the doctor to pay.

He testified that, when he said “pay”, he meant through the law and denied that he was referring to money. When he said he wanted to know what he intended to do, he meant that he wanted him to admit that he was wrong and that he was sorry, and to “more or

less know what he did and get the help that he would need.” He told the doctor that he should realize he could be charged with sexually assaulting him and ruining his life. In the letter, he went on to say that it would kill his mother and father and that he was not the only victim. When he said in the letter that he would take further action if he didn’t hear from Dr. Sazant within two weeks, he meant that he was going to come out with the whole story that he had been holding back for years.

Dr. Sazant did reply in a letter and Patient A said that, when Dr. Sazant’s letter stated that Patient A had abused Dr. Sazant, he decided he had enough and sat down one night and told his parents, as well as his wife and kids, what happened. He said his wife did not know the whole story until then, although she knew something had occurred between them where Dr. Sazant would “pleasure himself.” The day after he received Dr. Sazant’s reply, in January, 1998, he went to talk to the local RCMP. He said, “I figured this is it. I can’t do no more, so I’ll let the police handle it or do whatever they can to more or less stop this man from doing it to any other innocent child.” He began seeing a psychiatrist after that visit to the police and continues to do so.

Although he denied that he knew any of the other complainants in this case, Patient A said that his sister, Ms. K, told him that she knew that something went on between him and Dr. Sazant. She also told him that she knew that there had been “another one”, which he took to mean one who had been abused by Dr. Sazant.

Patient A acknowledged that he had read his previous statements to the police and the College investigators, “what he could understand.” He stated that he came from the East Coast to Toronto to give a statement to the Toronto police in 1999. He drove to Toronto with a friend and he began drinking at 1:00 p.m. and continued until 5:00 or 6:00 in the morning. He stated that he and his friend drank two or three bottles of rye and that he was still drunk when he went to the interview with the Toronto police. He testified that he hadn’t drank alcohol in the past six years, calculating from the time of his testimony before us, but had taken three types of prescription medication the morning of his

testimony before the Panel as he had every morning for years. He denied being confused or drugged when he was being questioned at the hearing.

Evidence was presented relating to the many visits Patient A had to Dr. Sazant's office over the years. Many of the sessions were related to workplace injuries and their sequelae and, on many of the visits, he was given analgesics. He denied that he saw Dr. Sazant regularly for talks about his personal problems as noted with one hour psychotherapy sessions in his file. He said that, usually, he was there for about fifteen minutes. He also denied that, on the last occasion he saw Dr. Sazant, he was examined for a cyst on his testicle as noted in the chart. He did admit that he drove to Toronto regularly to see him despite having another local physician.

Patient A, in his first statement to the police, said that he recalled abuse from the age of 1 to 6 years old. He agreed he must have said that if it was in the police statement. However, he said he did not recall abuse from those years as his memories began at about age 8.

He also told the RCMP that, when he sat in Dr. Sazant's lap as a young boy while in his office, the doctor would have a "hard on". However, he never mentioned this detail later to the Toronto police or during the preliminary inquiry in the criminal proceedings or during his examination-in chief at the hearing.

When asked why he persisted in going to Dr. Sazant for years on a regular basis, even despite Dr. Sazant abusing him, he replied: "Because I could get any medication I wanted. I could get any forms filled out for not working or anything and I would just have to pick the phone up and discuss something on the phone and I'd have Workman's Comp paper signed. I'd have prescriptions sitting here to pick up on the way through. It was just an easy process where I got whatever I wanted when it came to medication. Or, if I didn't want to work, my papers were sitting there. I didn't have to go to work."

Dr. Sazant's Evidence Regarding Patient A

Dr. Sazant began seeing Patient A's family at the Raxlen Clinic in 1964. Because they had chronic illnesses and were on welfare, they required their prescriptions to be renewed by the physician monthly. They usually came with Patient A, their son, as well as Ms. K, his sister.

In his testimony, Dr. Sazant denied kissing Patient A on his lips. He also denied picking up Patient A and holding him on his lap and rubbing his legs or touching his groin. Examinations were done in the same room as the parents and he denied he ever moaned and groaned and whispered he loved him as his parents would be in the room and he would not close the examination area curtain. He also denied ever pushing his groin into Patient A's buttocks while getting him a pop out of the fridge.

Dr. Sazant admitted that Patient A's parents began inviting him to their home for Sunday dinner at noon and he would go there about once every two months from about 1974 to 1994, when they moved to the East Coast. He only stayed an hour to an hour and a half as he went to the karate club afterwards. He adamantly denied going to Patient A's home 80 times a year as Patient A had stated to the Toronto police, or taking the boy to his home afterwards that many times a year.

Dr. Sazant stated that, in 1972, he started going to a karate studio in his area on Saturdays, Sundays and through the weekday evenings when he could. After training on Saturdays and Sundays until 6 p.m., he went out to dinner with the instructors and senior students. In 1979, Dr. Sazant received his honorary black belt in karate.

Dr. Sazant admitted going to see Patient A play hockey. When he noticed that he had poor equipment, he said he bought him new hockey equipment. Patient A was about 13 when he bought hockey equipment for him and, in order to pay for that, Patient A came to his home to do work. He came about six times to his home in the year 1977. He also reported that he took Patient A and his father to a boxing match that he was supervising.

He also took the boy to the Ontario Science Centre, Ontario Place, a professional hockey game and the Canadian National Exhibition.

When the boy came to his house to work, he stayed only a couple of hours and Dr. Sazant admits that he play-wrestled with Patient A once on the carpet in the upstairs living room and once on the carpet of the downstairs room. Later, he said that he could not remember clearly a third episode of play-wrestling, and only recalled two clearly. He said, “He was a big boy and he just seemed to want to play wrestle.” Later, in cross-examination, he said it was “mutually suggested” and that [the play-wrestling] “...began standing up and we both fell lightly down to the ground.” He denied doing so unclothed or that any other sexual activity occurred. During the play-wrestling in the downstairs basement room, he recounted that Patient A pushed him onto the bed. However, he also said that it started on the bed because it was softer. He could not hold him down so he reached *down* and got some ropes on his dresser to tie Patient A’s wrists to the side of the bed. He said this episode lasted about ten minutes.

During cross-examination, Dr. Sazant denied that there were ropes in a white box under the bed, and claimed they were on top of the dresser that was beside the bed in the basement recreation room. He said he reached *over* to get the ropes from the dresser while play-wrestling. Later, he said that he had to reach *up* to get the ropes. Despite Patient A wrestling with him and being close to six feet tall and “very strong”, he was able to reach *across* and grab the ropes and tie Patient A to the bed, as he didn’t want to lose. The incident lasted about ten minutes and ended with Patient A being tied to the bed and saying, “all right, you win this one.”

Dr. Sazant maintained that it was not inappropriate for a doctor to be play-wrestling with his patient as it was non-sexual activity and that it was within appropriate boundaries for a doctor and youthful patient unaccompanied by parents.

The charts of Patient A were presented for his numerous visits when he lived outside Toronto. Dr. Sazant knew he was seeing other doctors but did not check with them about

what they were prescribing for his workplace injuries and took Patient A's word for it. There were no notes of communications with other family doctors in his records. He agreed that he signed Workman's Compensation forms for him and gave Patient A's wife sample birth control pills. He did not recall billing for individual one-hour psychotherapy for both Patient A and his wife when they came to his office for Sunday visits as his charts noted.

Dr. Sazant maintained that the reason that Patient A said he continued to see him despite years of sexual abuse was a "cover". Counsel for Dr. Sazant suggested it was a conspiracy, not so he could get forms filled out and analgesics, but rather this was offered as an explanation by Patient A for coming regularly to see Dr. Sazant. The implication of this was that it was unbelievable that he would have come to see Dr. Sazant regularly if sexual abuse had indeed happened.

On the issue of Patient A's having a financial motive for bringing these allegations forward, Dr. Sazant admitted that none of the complainants had sued him civilly until he sued Patient A, at which time, Patient A countersued him.

Dr. Sazant's view was that Patient A knew that there was another complainant from his sister who worked for him for a time. He kept a file in his office about Mr. D who had made statements to the police in 1991. He said that Patient A convinced him to let him wash the walls of his office a few months prior to his move to the East Coast and, after that, he noticed that the file he kept on Mr. D's complaint was missing. Apparently, according to Dr. Sazant, this file was kept in the same filing cabinet as his patient files.

When he received the letter from Patient A, Dr. Sazant said he consulted two lawyers as he perceived the letter to be an extortion letter. He denied sexually touching Patient A or sexually abusing him in any way.

Evidence of Other Witnesses**Mr. U**

Dr. Sazant called Mr. U who had been an instructor at two karate studio locations between 1972 and 1976. He remembers seeing Dr. Sazant at one location frequently and gave evidence about how difficult it is to achieve a black belt and said they would have to attend classes a minimum of five days per week over a period from two to ten years. He definitely recalled seeing Dr. Sazant on weekday evenings, and thought he was there on weekends as well. Mr. U also said the doctor was there “constantly”. He also said that someone could have attended a 90-minute class and then left the club. However, he said, when he last saw Dr. Sazant, he had a green or blue belt, so he could not speak to the doctor’s activities at the club during the time period that he was seeking at least his brown and black belts and possibly his blue belt as well. Mr. U also testified that he worked at both studios, sometimes switching locations on short notice, and therefore was not always privy to Dr. Sazant’s attendance. Mr. U also testified that he was and is a patient of Dr. Sazant.

Evidence of Ms. V

Ms. V testified that she was a part-owner of the karate club where Dr. Sazant trained, and that she was at the studio every weekend from 1972 or 1973 to 1979. She testified that, during that time, Dr. Sazant attended the club every Saturday and every Sunday, arriving between noon and 1 pm and staying until the club closed around 6 pm, when he would always go out with the teachers, staff and students for dinner. He missed a day at the club “less than a handful of times”, or fewer than six times in this period. She said that, in order to get a black belt, the doctor had to be physically there regularly as they “did not give away black belt certificates.”

Evidence of Ms. W

Ms. W was Dr. Sazant's secretary in the mornings only from 1979 to 1980, a year and a half. She said that the doctor had long appointments with his patients, did lots of counseling and psychotherapy. Patient A came about once a month to see the doctor, always seemed happy to see him and would have one of the longer appointments, usually about 45 minutes.

Dr. Sazant's Letter to Patient A

In his letter to Patient A, Dr. Sazant wrote that Patient A, "...used me by hugging and kissing me (usually both) every time you came to my office, even up to the last day before you moved to [the East Coast] 3 years ago."

Patient A's Wife (Ms. J)

Patient A's wife testified that her husband told her in general terms what had happened between Dr. Sazant and himself in 1985. She occasionally attended appointments with her husband and did bring their son along with them sometimes but denied that Dr. Sazant had ever examined the child. Dr. Sazant occasionally provided medical care to them and gave her free samples of birth control pills. She denied having psychotherapy for an hour as noted in her file. A chart annotation suggests one hour psychotherapy for her husband that day as well and she does not recall waiting for him for an hour while he talked to the doctor. They did discuss current circumstances on their appointments however and would meet with the doctor for about fifteen minutes. Despite knowing that the doctor had sexually abused her husband, Ms. J continued to send greeting cards and pictures of the children to him. She said she did so as she was encouraged by Patient A's parents. She did it to keep up appearances as she thought it was her husband's decision, not hers. She thought it was not up to her to force her husband to reveal the details of his childhood sexual abuse by the trusted doctor.

Evidence of Patient A's Sister (Ms. K)

Patient A's sister, from whom he is estranged, contradicted Patient A's testimony in some areas. She said the doctor hugged and kissed her mother, shook her father's hand, and he

did not kiss her brother. This is in contrast to her brother's testimony as well as the evidence in Dr. Sazant's letter that kissing took place. Dr. Sazant said in his letter that Patient A kissed him. The doctor never put the kids on his lap, nor did she ever see the doctor rubbing her brother's legs. She denied her brother's assertion that the curtain was closed when the doctor examined him in the physician's office when he had the cast on his leg and that the doctor moaned and groaned and said "I love you" to her brother. In all of the doctor's offices, the examination table was close to his desk. She also maintained that the doctor gave her gifts as well.

She worked for the doctor for a few years and continued to maintain contact with the doctor over the years, as did her parents and brother and his family.

In contrast to Patient A's testimony that he became aware of another allegation from his sister, who said there was "another one", she denied this. She said that Patient A would have had access to the entire files as he cleaned the office on one occasion with a friend.

Dr. Sazant came to their home every three weeks to a month for dinner at noon. She confirmed that the doctor took her brother on excursions and she was invited to join them as well, but refused.

Ms. K also claimed that incest was a problem in her family, and her younger brother, the complainant, sexually abused her from the time she was 5 until she was 12.

She also confirmed that her brother had told her previously that Dr. Sazant had tied him up with ropes in 1983 or 1984 and he was intoxicated and laughing about the incident at the time. During this same conversation, Patient A brought up his own abuse of her and laughed about taking her underwear off.

Credibility of Patient A

With regard to considering evidence from adults who testify about what happened to them as children, the courts have offered guidance. In *R. v. W.(R.)*, [1991] S.C.J. No.56,

at para.26, the court outlined that, when an adult testifies about what happened to them as a child, the presence of inconsistencies, particularly as to matters related to time and location, should be assessed in the context of the age of the witness at the time of the events to which they are testifying.

With respect to the complainant's failure to make a timely complaint, the Supreme Court has said that this must not be subject to any adverse inference. In addition, "victims of abuse often do not disclose it, and if they do, it may not be until a substantial length of time has passed" [*R. v. D.D.*, [2000] S.C.J. No 44 at para.63; *R. v. W.(R.)*, *supra* at para.30].

Patient A did not come forward with his allegations until many years had passed. There were inconsistencies in numbers and times of alleged abuse that the Committee considered in light of his age at the time of the alleged events.

The Committee noted that Patient A varied his story with regard to how many times he was abused by Dr. Sazant from the ages of 8 to 14. When he first disclosed to the RCMP in his current province of residence, the notes of the officer at the interview said seven to eight times between 1972 and 1978. Patient A said that he didn't recall saying he was abused seven or eight times to the police. When it was pointed out what the police had written in their notes, Patient A said that he must have said that if it was written down and signed by him.

However, in his testimony, he related that he said he was abused two to three times a month. When he saw the Toronto police in July 1998, he said the abuse occurred two to three times a month. In the same interview, he said 80 times a year. He said he was drunk at the time of this interview.

In the course of the hearing, the Committee heard evidence that Patient A had difficulties with numeracy. He reported that he was married in 1985 and, when asked how long he had been married in 1994, he could not calculate that number but thought it was probably

twelve years. He was born in 1964 and, when asked how old he would be in 1984, he said 30 to 32 years. When asked what year he would have turned 15, he couldn't calculate that. He also had difficulty calculating a dosage for one of his medications. Due to his difficulties with numeracy, the Committee did not conclude that the inaccuracy in calculating 80 times a year with the Toronto police was due to an attempt to intentionally deceive or exaggerate.

There were other inconsistencies in his story. He said at one time that there was no touching and rubbing of his legs at Dr. Sazant's office. With respect to sitting on his lap in the office, Patient A did not mention that Dr. Sazant had an erection but another time he said he did.

Patient A said it was either at the Lawrence and Bathurst Street office or the College and Euclid office when he was 11 or 12 that Dr. Sazant rubbed against his buttocks when they went to another room for a pop. However, Dr. Sazant did not move to the Lawrence and Bathurst location until after 1979, when Patient A was 15 years old.

The Committee accepted that Dr. Sazant had been invited to Patient A's wedding and had been an usher. Patient A denied a photo was taken of him and Dr. Sazant at his wedding and, later, when it was produced, admitted it was a photo of them taken side by side. When confronted by counsel about inviting his abuser to celebrate in his wedding, he denied inviting Dr. Sazant and claimed his mother extended the invitation. In that he had not fully dealt with his childhood experience with Dr. Sazant by the time of the wedding, the Committee did not find that Dr. Sazant's invitation to the wedding or his participation in it as an usher detracted from the credibility of Patient A.

Patient A said that his sister, Ms. K, had told him about "another one", meaning someone who had alleged that abuse occurred, but his sister denied saying that to him.

Patient A recounted that Dr. Sazant moaned and groaned and said he loved him when he was examined with his cast on. He said initially that this occurred at the Raxlen Clinic

and later said it was at the College and Euclid Street office. Uncertainty as to the distance from where his parents were and where the examining table was, and conflicting evidence regarding a partition being present or open or closed, leaves the Committee unable to resolve the conflict whether this happened or not.

In his interviews with the police and at the preliminary hearing, Patient A said that Dr. Sazant kissed him on the cheek. However, during his examination in chief, he said Dr. Sazant kissed him on the lips when he went to the doctor's office with his family. Later during cross-examination, he claimed that Dr. Sazant kissed him on the cheek or lips at times and, sometimes, on both the cheek and lips.

Patient A continued to see Dr. Sazant regularly from 1983 to 1994, sometimes with his wife and child, in the years following the abuse. Because of this, counsel for Dr. Sazant argues his claims are not supported. Despite the trauma that he outlined in his letter to the doctor, he continued to see the doctor regularly. His inability to work was a longstanding problem and was due to his lack of interest in maintaining work, suggested Dr. Sazant's counsel. Patient A explained that he saw the doctor because his office was on his way when he went to see his family. He said it would have raised too many questions with his family to not see him. However, the Committee found most likely and most credible his final answer on this point that he continued to see the doctor because he could get him to sign any forms he wanted so he didn't have to work.

Patient A denied receiving psychotherapy from Dr. Sazant. The Committee notes that there were numerous notes in Dr. Sazant's clinical records that suggested OHIP was billed for an hour of psychotherapy. Ms. J does not recall psychotherapy as such either. She did admit that they would discuss how things were going in their life. Dr. Sazant's counsel suggests that Patient A's denial of his medical records is self-serving and places his credibility in question as it is an attempt to distance himself from conduct that clearly contradicts his allegations of sexual abuse. The Committee found Patient A and his wife credible on this point. They both deny psychotherapy occurred for an hour and, at least on one occasion, for an hour each, with the other waiting outside the room. Patient A

seemed to have difficulty understanding what psychotherapy was until it was explained to him.

Patient A had a poor work history as well as a record of financial difficulties. Over the years, Dr. Sazant sent the family money at Christmas time and for birthdays. In the midst of financial difficulties, Patient A and his wife sent the previously mentioned letter to Dr. Sazant that counsel for Dr. Sazant claims is an extortion letter. By using the language, “Now is the time for you to pay. You were my Doctor, you had your sick fun, I want to know what you intend to do. Please do not phone me because I will not answer I want to hear from you within two weeks.” Also, “If I don’t hear from you within two weeks I will be taking further action,” as well as, “It’s time you realized that you can be charged for sexually assaulting me and destroying my life.”

The Committee did not conclude that this was an extortion letter despite Patient A’s financial difficulties. It seems more likely that his statement that his children were getting older and it was time to deal with this issue that had been affecting him for a long time, was the truth. The Committee also thought that his letter was consistent with his assertion that he wanted the doctor to say sorry and to recognize he had a “problem” with children. He said he told at least two others, his wife and sister, some of the details of the abuse many years earlier. His wife confirmed that, although his sister did not. Although he was not a sophisticated man, and his version of events was not always consistent, the Committee did not detect guile in his straightforward testimony.

Dr. Sazant’s Credibility

Dr. Sazant denied kissing Patient A on the lips in his testimony but in his letter to Patient A, he said Patient A hugged and kissed him. Patient A said he was kissed on the lips or cheek or sometimes both, while his sister denied this act occurred at all. Whether the kiss was on the lips or not there is no doubt in the Committee’s mind that kissing had taken place. Both men have said a kiss regularly occurred between them. Dr. Sazant denied that in his oral testimony but in his letter he said that kissing took place in his office, albeit that the kisses were forced on him by Patient A.

During examination-in-chief, Dr. Sazant said there were no curtains around the table at the Raxlen Clinic but later in cross, said it had a curtain or a folding door. The Committee is unable to reconcile the difference in his answer.

His explanation of how Patient A came to be tied up to the bed while play-wrestling was so incredulous that the Committee concluded that he was not telling the truth. His explanation of why and how Patient A came to be tied to the bed was internally inconsistent. Modus and motive aside, there is no issue that Patient A was tied up to the bed by Dr. Sazant in the privacy of his basement bedroom.

Dr. Sazant admitted that he had lumbosacral problems from the early 1970's. Despite this significant problem that bothered him enough that he would wear a back brace periodically to this day, he claimed he was at the karate studio every Saturday and Sunday for seven years and was there virtually all day, working towards his black belt. This seems unlikely given some of the other testimony. Many patients, who were witnesses called on his behalf, also testified about having him for dinner. They also talked about his busy social schedule and finding time to slot his visit in due to his busyness, yet he found time to attend bar mitzvahs, weddings and important family occasions too. He also regularly attended as ringside doctor for boxing matches. Dr. Sazant also testified that Patient A attended his house six times in 1977 on weekend afternoons. Ms. V confirmed his version of his activities, saying he only missed five or six Sundays at the karate studio over seven years, yet, according to his own testimony, Dr. Sazant was not there for six weekend afternoons in one year.

Dr. Sazant and his counsel suggested that Patient A went through his files when they were cleaning his office and that they could have found the file he says he kept there on Mr. D and the 1991 matter. However, Patient A had some difficulty with reading and numeracy, as the Committee heard and witnessed during his testimony, so it seems unlikely that Patient A would be able to find the one thin file of possible interest among the patient files in Dr. Sazant's office. Moreover, there was no evidence that he even

knew the name of Mr. D. He said this file was missing after Patient A washed his office walls. The Committee had difficulty with Dr. Sazant's testimony on this, as common sense suggests that private material related to sensitive sexual and legal issues would not be stored with the charts of patients when the complainant was not a patient and the secretary or other staff would have easy access to it in the course of their work. Even if it was, it would not have revealed details of Mr. D's allegations, on Dr. Sazant's own evidence. Dr. Sazant admitted that the file he kept on the Mr. D matter did not contain any mention of ropes or details of the allegations.

While Dr. Sazant claims that Patient A's letter to him was an extortion letter, if he seriously considered that was so, he could have gone to the police at that time and he chose not to do that.

Dr. Sazant claimed that Patient A made up the sexual abuse allegations because he was in dire financial straits and had a head injury as well as post-traumatic stress syndrome. The Committee heard no evidence to support an injury that would affect his testimony.

Dr. Sazant's credibility was called into question with his reluctance to give straightforward responses to questions and his insistence on editorializing to cast himself in a positive light and attempt to undermine the credibility of Patient A.

Credibility of Ms. K

As Ms. K is a year and a few months older than Patient A, his alleged sexual abuse of her would have started when he was age 3, and that seems highly improbable.

She also said there was no kissing between the doctor and her brother but both of them have confirmed there was kissing, calling into question her credibility, given that she was often present when the kissing regularly took place over the years. She also denied telling her brother that there was "another one", who had claimed sexual abuse by Dr. Sazant. The Committee had no reason to doubt other aspects of her testimony, despite any motive that she may have had due to her estrangement from her brother.

Credibility of Ms. J

The Committee had no reason to disbelieve Ms. J's version of events. The members found her account to be straightforward and reasonable.

Credibility of Ms. V

This witness claimed that Dr. Sazant did not miss a weekend afternoon at the karate club more than a handful of times in seven years. The Committee did not place great weight on that statement given some of the other testimony as mentioned previously under the section dealing with Dr. Sazant's credibility above.

Credibility of Mr. U

Mr. U's testimony was straightforward and the Committee found him credible. The Committee took into consideration, when evaluating the weight to be given to his evidence, that he moved between club sites and was not at the club where Dr. Sazant worked out all the time. On balance his testimony does not support the suggestion that all of Dr. Sazant's time was accounted for.

Credibility of Other Witnesses

The Committee heard from many patients and friends who had very positive things to say about Dr. Sazant and his character and medical care. Many of them recounted how Dr. Sazant also attended their homes regularly for dinner or attended special family occasions. Some of them mentioned how difficult it was to have him to their home as he had such a busy social schedule. The Committee found the witnesses who testified about Dr. Sazant's kindness and caring as well as his social life with them to be credible overall in their descriptions of his care for them and their dependence on his medical care.

Legal Issues and Findings with Respect to Patient A

Counsel for Dr. Sazant argues that Patient A came forth at this time of his life, many years after the alleged sexual abuse, for a financial motive as he was in dire financial straits. She argues that his continued visits to the doctor, even though he lived outside

Toronto, and the continued communication through cards and photos in a warm and caring way by way of his wife, indicate that the alleged abuse never occurred.

In the case of *R. v. D.D.*, [2000] S.C.J. No. 44, the court said: "...there is no inviolable rule on how people who are victims of trauma like a sexual assault will behave." In this case, they were referring to the time period between the time of the alleged assault and the reporting of it. However, the Committee believes that the statement also describes the behaviour of victims of sexual abuse in general, and it would be folly to expect that they would act in a certain way, either with regard to ongoing contact with the perpetrator, how or when they disclose, or how they emotionally deal with the abuse. To make a rigid conclusion otherwise does not make sense.

In *R. v. W.(R.)*, [1992] S.C.J. No.56, the court said:

In general, where an adult is testifying as to events which occurred when she was a child, her credibility should be assessed according to criteria applicable to her as an adult witness. Yet with regard to her evidence pertaining to events which occurred in childhood, the presence of inconsistencies, particularly as to peripheral matters such as time and location, should be considered in the context of the age of the witness at the time of the events to which she is testifying.

This same case noted that, "...victims of abuse often in fact do not disclose it, and if they do, it may not be until a substantial length of time has passed."

Patient A claimed that his sister told him that there was "another one", a claim she denies. If the Committee accepts her version that she never told him about another complainant, then Patient A would have had no prior knowledge of another complainant regarding sexual abuse. The Committee was unable to reconcile their testimony.

The Committee considered that Patient A was being truthful when he testified about being tied up in Dr. Sazant's basement and of Dr. Sazant masturbating on his leg to ejaculation. The members considered that the most likely version of his testimony was that it occurred two to three times a month over a period of years, given his admission to being drunk when he told the police 80 times, and his problems with numeracy.

The Committee did not conclude that the doctor rubbed his testicles and moaned and groaned, “I love you” while he was examined in his office. The evidence with regard to this act was not sufficient to permit the Committee to arrive at a conclusion as to whether it happened or not.

The Committee is of the view that the evidence that Patient A presented in regards to the sexual incidents that occurred at Dr. Sazant’s home was credible, consistent and reasonable. There were variations in some of the details of other conduct he alleged (sitting on the doctor’s lap in his office, and the examination while in a cast, and the doctor rubbing his groin against him when getting a pop in another room) such that the Committee concludes the *Bernstein* standard of clear, cogent and convincing evidence is not met in relation to these acts. Patient A’s evidence of being tied up on multiple occasions in Dr. Sazant’s basement bedroom and of Dr. Sazant masturbating against his leg is accepted by the Committee. He was clear that it occurred two to three times a month over a period of years, and the Committee believed his version regarding the frequency as well. While we cannot with any certainty make a conclusion as to the total number of times that the abuse occurred, we conclude that the alleged abuse in Dr. Sazant’s house did occur, and uncertainty about the number of times does not change that fact. We consider that the conflicting testimony of Patient A concerning the number of times does not impugn the entirety or the key elements of his testimony as to the events that occurred.

Dr. Sazant’s counsel argues that it must be established that Dr. Sazant has been guilty of misconduct in a professional respect with respect to his patient Patient A under s.34(3)(c) of the *Medical Act*. She argues that the behaviour took place outside a medical office and, therefore, does not constitute misconduct in a professional respect or professional misconduct. When a physician abuses a patient in a sexual manner, whether outside or inside his office, it reflects not just on the physician, but on the profession, and, therefore, constitutes misconduct in a professional respect and disgraceful, dishonourable or unprofessional conduct. The sexual abuse of a child, whether or not a patient (Patient A

was a patient) undermines confidence in the medical profession and the medical system itself. The principles and precedents cited in the case of Mr. D above apply here as well.

Summary

The Committee finds that Dr. Sazant engaged in misconduct in a professional respect, acts of sexual impropriety, and disgraceful, dishonourable or unprofessional conduct with Patient A, a patient, at his home between approximately 1972 and 1978. We find that Dr. Sazant kissed and hugged him, tied him to a bed, rubbed his leg on multiple occasions with his penis and ejaculated on Patient A.

(3) Allegations Regarding Mr. B

It is alleged that Dr. Sazant engaged in disgraceful, dishonourable or unprofessional conduct with Mr. B between 1979 and 1982, including kissing him, tying him to a bed, having Mr. B perform oral sex on him, stroking Mr. B's penis and ejaculating on Mr. B.

Evidence of Mr. B

Mr. B was born in 1966 and was 40 years old at the time of his testimony. After high school, he completed some college and private association courses. He worked for a transportation company for the last nine years as well as additional freelance work in a private business for the last fifteen years.

He grew up in Toronto with his father and mother, as well as an older brother and sister. His father was aggressive with the children and his mother was an alcoholic. He took Ritalin for hyperactivity that made it difficult for people to be around him and he had problems getting along with his peers in school.

Mr. B admitted to having been charged with the theft of a hundred thousand dollar treasury bill, and that the charges were withdrawn. When he was in his twenties, he was asked to help kill an individual by someone he knew. When he realized the person was not bluffing, he went immediately to the police and acted as a witness in that case. He also had a period of time when he was in financial difficulty, has written off numerous

bad debts and failed to file income taxes for years, although he was never charged. He reported that he is still trying to resolve those issues with Revenue Canada.

He also acknowledged that he has applied to receive funding for therapy.

Mr. B testified that he first met Dr. Sazant when he was playing basketball at age 13 to 14 but he was not a hundred percent sure of that and agreed that it might have been when he was 14 and 15. He later said he was 14 when he attended the doctor's home. Dr. Sazant was the assistant coach of a youth basketball team. He described Dr. Sazant as a very gentle, friendly and caring individual. Within the first few weeks of meeting at basketball, he said the doctor would seem to spend more time with him than his teammates. He took an interest in him and explained that he had a lot of knowledge regarding hyperactivity. It made the boy happy to have Dr. Sazant interested in him and his problems.

The doctor gave him his home and office numbers and he called the doctor regularly. When Dr. Sazant offered to come and take him out from school at lunchtime, he accepted and he phoned the doctor about seven or eight times to go to lunch with him over a period of months. After lunch, Dr. Sazant would let him drive his car on the back streets and would take him back to school and, occasionally, gave him a few dollars. Mr. B's parents did not know he was meeting the doctor at lunchtime.

In the fall, a few weeks after beginning the basketball season, he went to Dr. Sazant's house to rake leaves. He went into the house to meet Dr. Sazant's mother and then the physician took him downstairs where there was a pool table. He showed Mr. B the room and then the doctor kissed him, shoving his tongue in his mouth. He said Dr. Sazant was trembling. The doctor then reached down and grabbed his crotch and squeezed him over top his pants. The doctor talked to him softly while doing this and called him [**deleted**]. Mr. B said he felt "surprised" by the doctor's actions.

They next went to the bathroom to wash their hands and then the doctor resumed feeling his crotch through his clothes. He was pretty sure Dr. Sazant then removed all of the boy's clothing, although Mr. B wasn't a hundred percent certain if his shirt was removed. Dr. Sazant then removed his own pants and underwear. He is not certain if the doctor took off his shirt.

After the doctor laid him on the bed and, while speaking very softly to him, trembling and shaking, Dr. Sazant straddled his chest and positioned him in a way so he could put his penis in his mouth. Dr. Sazant also had his hands on Mr. B's penis. The doctor brought out some white ropes that had loops at both ends. Mr. B stated, "...I thought it was pretty weird. And I remember - I remember him putting one on one of the bedposts, but I remember I was objecting to it." He said that the sexual activity was not consensual.

Because of Mr. B's objections, he did not think that ropes were used on the first occasion and the attempt to use the ropes stopped shortly thereafter. He thought that the doctor ejaculated but does not recall specifically him doing so, although he remembered a sense of completion. After they both went to the washroom to wash up, he recalled that the doctor spoke to him very softly and gently of the relationship/friendship they had and how close they were and how this situation should be private. He never did rake leaves that day but he was given some money.

Mr. B thought he returned to the home a few weeks later although he wasn't certain how long it was after the first visit. He was supposed to rake leaves that day as well. Although he didn't like the sexual activity, he returned because he liked being able to talk to the physician and relate with him.

On the second visit, they went to the basement and the doctor began kissing him again while shaking and trembling and his clothes were removed. Dr. Sazant continued to speak gently and brought out ropes with loops on both ends that he secured to the bedposts around the bed. Dr. Sazant put the loops of the ropes on Mr. B's hands and feet

and then straddled his chest and put his penis in the boy's mouth. He also recalls the doctor also putting his own hands into the ropes. The ropes were loose on his hands and he is not sure how long he left his hands in the ropes. It is possible that they were out of the ropes for the majority of the time of the sexual activity he said and he also said he thought his hands were bound for a significant portion of the time during the sexual activity. He believed that the doctor stroked his penis and kissed him during this time period in the basement as well. Throughout this time, the physician was telling him how much he enjoyed spending time with him and how much he liked him. He did not recall the ejaculation but had a sense of being "finished" and going to the bathroom to wash up again.

Mr. B reported that he had an opportunity to look at Dr. Sazant's penis and that he thought it was circumcised.

Mr. B related that he thought it was after his second visit to Dr. Sazant's home that the doctor took him to his office in the Lawrence and Bathurst area of Toronto and that Dr. Sazant showed him around and also kissed him. During his statement to the College investigator, he admitted that he said they "fooled around" when at the physician's office. He said that "fooling around," meant that they did things to each other.

When he spoke to the College investigators, Mr. B said that Dr. Sazant performed oral sex on him. However, in his testimony at the hearing, he said he wasn't sure if he had told the investigator and he did not mention it at the preliminary inquiry or in his statement to the police.

He had a long-term relationship with a woman called Ms. X and he denied telling her that he was anally raped or physically abused "in places that didn't show" as described by Ms. X in her testimony. He did admit telling her years ago that he was sexually abused by Dr. Sazant but said that she was mistaken about the details, particularly about being forced over a pool table and anally raped.

Mr. B does not recall going to Dr. Sazant's home again as he didn't want to engage in sexual activity and, although he didn't tell Dr. Sazant that, he did put him off somehow. He testified that the physician would always speak in a soft and caring way but that changed as Mr. B kept putting off going to his house. Dr. Sazant became distant and a little less friendly, he said.

He recalls his last interaction with the doctor happened at school, either at the end of the basketball season or just after it had finished. On this visit, he said the doctor gave him an ultimatum, if he wasn't prepared to go to his house to visit him, then he couldn't be his friend anymore. Dr. Sazant never spoke to him again but Mr. B said that he did continue to call the office and listened to his voice on the answering machine as he missed the friendship that they had.

When he heard a media broadcast about Dr. Sazant being arrested for allegations of sexual improprieties, he went to the police. He reported that he had been struggling with what happened for a long time. He said, "I felt very guilty of the fact that, for many years, I'd never done anything about it."

Mr. B denied knowing who any of the other complainants were and said that, other than the single media report that triggered his complaint to the police, he had much later read only the Supreme Court decision as it related to his part in the criminal charges against Dr. Sazant.

Mr. B also said that he received a certificate at the end of the basketball season that certified that he participated in the 1981 season. It was signed by his coach and Dr. Sazant as assistant coach. He agreed that, in the fall of 1980, he would have been 13 years old.

Other evidence was given, whereby Mr. B acknowledged that he was "taking your word for it" when defence counsel suggested he started grade 1 at age 6. He said he thought he was in grade 7 or 8 when he was driving Dr. Sazant's car but the evidence was not

helpful as it was vague. Counsel for Dr. Sazant suggested that Mr. B was 14 years old in 1980 and 15 years old in 1981 and he agreed. However, the Committee notes that he would not have been 14 in 1980 until his birthday in December of that year.

Mr. B denied that he was sexually attracted to Dr. Sazant or that he was the one who attempted to sexually touch Dr. Sazant.

Evidence of Dr. Sazant Regarding Mr. B

Dr. Sazant said he was the assistant coach for the Youth amateur basketball at the YMCA for one season, 1981 and 1982. He began coaching in October and the season ended at the end of March 1982. He said the boys on the team were in the same age group and they were all 14 years of age. Dr. Sazant said it was difficult to recall details from twenty-five years ago, but he thought he worked with the team twice a week.

Dr. Sazant said that Mr. B asked to talk to him about severe family problems that he was having. He then asked to come over to his house to speak to him about them and Dr. Sazant told him he would have to ask his father if that was alright. He thought Mr. B came to his house about two months after he first met him, in December, 1981. He recalls the date as he believes Mr. B told him he had his birthday a week before, and it was before Christmas.

He recalled that Mr. B took the bus to his home and Dr. Sazant introduced him to his mother. Mr. B then asked to speak to him in private and Dr. Sazant took him to the basement of his home whereupon Mr. B talked to him about his problems for about half an hour. After that, Mr. B stood up and came over to Dr. Sazant and touched him with his hand against his groin. No conversation led up to that point. He claimed that Mr. B then said, "Let's get on the bed and muck around." He said, "no" to the boy and felt very surprised. After that, he drove the boy home.

Dr. Sazant continued to see Mr. B at practices and, several weeks later in mid-January 1982, Mr. B asked him if he could speak to him further about his problems. He again

came to Dr. Sazant's house and asked to speak more privately and they went to the basement. Again, he recounted what had happened with his home situation. After a period of time, they got up and he said to the doctor, "You know, I can give you a good blow job. I'm very good at it." Dr. Sazant states that he said "no".

Dr. Sazant drove him home again and he believes that they stopped at a restaurant on the way as Mr. B said he would like to have something to eat. Mr. B and the doctor continued to see each other at games and they met a further two times at his house. The next time was in February, when Mr. B reported that his mother was doing better and the pressure was off of him. He also said he appreciated the physician supporting him. No sexual advances occurred that time.

Mr. B returned later that month or some weeks later and related that the situation at home was improving and he just wanted to talk about his father. No sexual advances occurred on that occasion either. Dr. Sazant continued to receive phone calls about five times a week where the boy would ask to see him and to talk to him.

About March, when Mr. B indicated he wanted to come to his house, Dr. Sazant told him that it would be better if they met at a restaurant as the physician didn't see the necessity of him coming to his house, especially after the early sexual proposals. He said he took him out to lunch two or three times in March and contact with him ceased in May 1982.

Dr. Sazant denied that Mr. B performed oral sex on him or that he performed oral sex on Mr. B. At no time did they have their clothes off, get on the bed or kiss.

The doctor was born with a condition called hypospadias where the urethral opening is not at the tip of the penis but on the shaft and urine flows out of his penis at an angle. Because of his religion, circumcision is required, but due to the hypospadias, they did a minimal circumcision, so some foreskin could be left for surgical reconstruction if necessary. Because only a minimal circumcision was done, Dr. Sazant claims his penis has an uncircumcised appearance.

A certificate was given to the boys signed by the coach and Dr. Sazant, the assistant coach. Mr. B's certificate stated: "This is to certify that Mr. B participated in the...1981 season." Although the certificate said "participated", Dr. Sazant suggested that the players received their certificates earlier in the basketball season and not at the end. Dr. Sazant stated that the basketball season began in October or November of 1981. He said his recollection was that it started in 1981. Mr. B was born in 1966 and turned 14 in December, 1980. Dr. Sazant understood that the year of the basketball season was important as, before 1985, the age of consent for sexual activity was 14 and said he believed Mr. B was 14 when he came to his house.

Dr. Sazant agreed that he let Mr. B drive his car on two occasions upon his request and he only allowed him to drive in a parking lot for a few minutes although he noted that the boy was quite skilled. He said that Mr. B did a lot to cultivate his trust and that they both became friends with each other

Evidence of Other Witnesses

Evidence of Dr. Y

Dr. Y, a urologist, examined Dr. Sazant in 2001 and again in 2007. He testified that Dr. Sazant's penis appears uncircumcised. He made no mention of a wedge in the shaft of the penis.

Dr. Y mentioned in his report about his observations that the hypospadias "causes urine to exit the penis at right angle to the penis" and that this was observed as he did a uroflow examination. The hypospadias also causes semen to dribble out sideways and back toward his body." However, in his testimony, Dr. Y said that he did not observe Dr. Sazant urinate or ejaculate and that he based his report on what Dr. Sazant told him and he does not know how urine flows from Dr. Sazant's penis. He also did not observe Dr. Sazant's penis erect and does not know how it would look erect, however, he

acknowledged that an uncircumcised penis looks circumcised when erect to someone who is not a urologist.

Evidence of Dr. Z

Dr. Z examined Dr. Sazant's penis in 2001 and 2007. In his 2001 report, he noted that the doctor's penis appeared uncircumcised because, in the flaccid state, the penis looks as if it is retracted or pulled back within the suprapubic fat pad and into the top of the scrotum. The penis can look shorter and the skin of either the scrotum or the skin of the penis can look as if it is coming over the top of the penis itself and it can have the appearance of being uncircumcised. However, despite this appearance, Dr. Sazant has had a normal circumcision. He did not observe the doctor ejaculate or observe the penis when erect but confirmed that, when erect, an uncircumcised penis will look circumcised.

When Dr. Z examined Dr. Sazant in 2001, he made no mention of a wedge deformity on Dr. Sazant's penis. However, he testified that there was a very visible v-shaped wedge on the underside of the penis from the urethral opening to the head of the penis where the opening is normally found.

Evidence of Ms. X

Ms. X dated Mr. B about 20 years ago and testified that Mr. B discussed many times a man who was his basketball coach and also a doctor. On one occasion, while very emotional, Mr. B told her he was assaulted physically and sexually by this man. She recalls him saying he was tied and pushed over a table that she thought was a pool table. She did not recall the exact words of Mr. B but does remember him saying he was raped and she understood it to be anal rape and was positive about that.

Mr. B said Ms. X was mistaken regarding what Mr. B said to her about the sexual incident. There are many reasons why the testimony on this particular point may not have been concordant between Ms. X and Mr. B. The Committee had no reason to believe either of them was lying. He may have expressed what happened in a way that was misunderstood or she may have been mistaken in her interpretation of what he said

about being raped downstairs in the room with the pool table. The conclusion that the Committee reached was that Ms. X's testimony corroborated Mr. B's in terms of his being bound and sexually assaulted in some way.

Credibility of Mr. B

The Committee found Mr. B gave his evidence in a straightforward and credible way. His version of events held together. He was frank about his financial difficulties.

The Committee found him credible when he admitted that he enjoyed Dr. Sazant's company and he remembered the good parts of his relationship with him.

Mr. B did not tell the police or mention in the preliminary inquiry that mutual oral sex or mutual masturbation had occurred. He told the College, however, that these acts had occurred and he testified he was not sure that the doctor performed oral sex on him. However, he did not express his uncertainty with the College investigator and was unequivocal that oral sex happened. He admitted that he had reviewed his earlier statements in preparation for the hearing and that there were a few details that he had reported previously and could no longer remember. The Committee found that the variation in his testimony was not critical and that he did not try to tailor his testimony to make up for what he could not recall. The Committee believes that, with regard to the sensitive issues surrounding child sexual abuse, the full story of what happened may not initially be accepted by the person abused as having happened, let alone revealed on the first telling. The Committee believed and accepted his testimony on Dr. Sazant's sexual abuse.

His credibility with regard to the dates of his encounter with Dr. Sazant was supported by the dates on his basketball certificate that places the year of the basketball season as 1981.

Mr. B's assertion that Dr. Sazant's penis was circumcised was confirmed by the evidence of Dr. Z but was refuted by Dr. Y, both of whom were urologists. However, Dr. Z's

evidence regarding the appearance of Dr. Sazant's penis in the flaccid state accounts for the difference in opinion in the Committee's view. Both doctors attested to the fact that an uncircumcised penis looks circumcised in the erect state confirming Mr. B's recollection. Mr. B did not notice a "wedge" deformity that Dr. Y did not mention at all and Dr. Z did not note on his first examination of Dr. Sazant.

The Committee found Mr. B credible overall and on the central facts about the sexual incidents with Dr. Sazant.

Credibility of Dr. Sazant with respect to Mr. B

Dr. Sazant maintained that the basketball certificates were given out at the first of the season, that is, in 1981, at the beginning of the 1981-1982 season when Mr. B was 14. His claim does not accord with the information on the certificate, which said he *participated* in the 1981 season. Certificates of participation are normally given at the end of a season. Using Dr. Sazant's timelines for the basketball season, the certificates would have been given out in the spring of 1982 and this was very unlikely as the certificate said "participated in the 1981 season".

Dr. Sazant testified that the basketball season began in 1981 and extended to 1982, which would place Mr. B's age at 14 and 15. Dr. Sazant was very careful to suggest that, if the basketball season started in 1980, then he was going to say that Mr. B came to his house to rake leaves at a later time, which would place him in an age over 14, the age of consent at the time. The following exchange illustrates Dr. Sazant's willingness to be evasive and manipulative and to vary his testimony depending on what made him look better. His responses do not suggest that truthfulness was uppermost in his mind.

Q. Well, we have also heard evidence from Mr. B in answer to questions from the Panel as well that he came to your house to rake leaves, which would have been in the fall, October, maybe early November. And he still would have been 13. That's his evidence, right?

A. He didn't say a month. He said rake leaves. My backyard is full of leaves today. Leaves are there in December, January as well.

Q. Alright. So you are saying he would have raked the leaves and came to your house after he turned 14?

A. If you are going to use the year 1980.

Dr. Sazant's version of events with Mr. B seemed self-serving to the Committee. He would have the members believe that Mr. B, at age 13, made sexual advances to him with no prelude, after recounting some of the stressors in his life for half an hour. When Mr. B requested to come to his house to talk to him a second time, Dr. Sazant agreed to see him alone and in private and was propositioned on the second time as well, yet he continued to see him two more times alone in his basement and continued outside personal contact with him. The claim that the young boy, after being rebuked in his sexual advances, would request to come to his house on three more occasions (and be allowed to) is unbelievable. Dr. Sazant said he did not have him to his home again as he was concerned that the boy may make sexual advances to him, yet he had him there two more times after the first two times when he claimed sexual advances were made.

If he thought he was at risk of the child making a sexual advance, it is not believable that he would invite him to his home on three more occasions after the first sexual touch by Mr. B. Dr. Sazant was very clear in his testimony related to another complainant that he did not see children alone in his office without their parents. Clearly, he was sensitive to issues of propriety in dealing with children and his evidence with regard to how he handled Mr. B is not consistent with what he said his practices were at another time. When parents were supervising their children, he involved the parents in getting permission for the child to come to his home, as he said he did for Mr. M who walked his dog, and for Mr. B's first visit to his house and for Patient A's visit to do work to pay for the hockey equipment.

Dr. Sazant claimed that his penis appears uncircumcised as he has had a minimal circumcision because of hypospadias. However, two urologists diverged in their opinions on this point.

Credibility of Other Witnesses

Credibility of Dr. Y and Dr. Z

Dr. Y said Dr. Sazant's penis appeared uncircumcised while Dr. Z said it appeared uncircumcised but he had in fact had a normal circumcision. Dr. Z explained why it had the appearance of being uncircumcised in the flaccid state. Dr. Y admitted he made statements in his report that were inaccurate based on Dr. Sazant's report to him rather than observation and testing. Dr. Z acknowledged that he did not report a noticeable "wedge" deformity of the penis in his first examination, while Dr. Y did not mention it at all. The Committee had difficulty in reconciling the differences in their observations but did note that they were both clear that an erect uncircumcised penis appears circumcised to the untrained eye.

Credibility of Ms. X

The Committee viewed Ms. X as credible in describing the fact that Mr. B reported sexual abuse by a doctor who had been a coach of his. However, the Committee was not able to accept her testimony that Mr. B told her that he had been physically abused "in places that don't show" or that he was anally raped. The Committee believed that she had misinterpreted what was obviously a delicate and difficult admission to her by Mr. B of sexual abuse.

Legal Issues and Findings with Respect to Mr. B

The Committee is of the view that, on a balance of probabilities, Mr. B's basketball season was 1980 to 1981, given the dates on the certificate that says *participated* in the 1981 season. The certificate would most likely have been given at the end of the season, as is the norm in most sports activities, in the Committee's view.

Mr. B related that his relationship with the doctor began within a few weeks of the start of the basketball season and he could not recall how long after he met the doctor that he went to his house. However, he said he went to the doctor's home on two occasions to rake leaves a few weeks after the basketball season started. He was definite in his response that there were leaves on the ground when he went to the doctor's home. Other complainants testified that they went to Dr. Sazant's home to rake leaves and the Committee believes this would have been an activity done in the fall, not December or January, despite the possibility that there may still be leaves on the ground, as the doctor said. If there were leaves on the ground when Mr. B went to Dr. Sazant's home for the first visit and he was asked back a second time a few weeks later on the pretense of raking leaves, the Committee believes that the first instance of sexual abuse occurred before Mr. B's fourteenth birthday in December. The Committee finds that he was 13 at the time of his first sexual encounter with Dr. Sazant. The Committee considers that the evidence meets the *Bernstein* standard of being clear, cogent and convincing. The evidence of Mr. B was found to be credible and the Committee finds that the doctor perpetrated sexual abuse that involved tying up the boy, kissing, oral sex and fondling his penis.

Counsel for Dr. Sazant argues that because Mr. B described the doctor's penis as a normal, circumcised penis, he cannot be believed. She said that his failure to describe a wedge in the penis undermined his credibility as he would have had an opportunity to have a good look at it. The Committee does not place any weight on this argument. One of the urologists did not notice the "wedge" deformity and the other didn't note it in his first examination. Given the disparate testimony of two experts and their evidence that an uncircumcised penis looks circumcised when erect, Mr. B's evidence did not suffer from their testimony. Mr. B testified at the preliminary inquiry into the criminal charges against Dr. Sazant that the ejaculate from Dr. Sazant ended up on his chest. He was not asked by counsel, however, if the statement was true. In the hearing, Mr. B said he could not remember seeing Dr. Sazant ejaculate during either of the two sexual encounters.

Counsel for Dr. Sazant argues that, if there was sexual activity, Mr. B's sexual behaviour with Dr. Sazant was consensual and mutual. She said that his description of the sexual abuse as "we finished" and on another occasion as "we stopped," suggests that it was mutual and consensual. When he spoke about "fooling around" in the doctor's office, she said he was referring to mutual sexual activity. Similarly, when he talked at the preliminary inquiry about the sexual activity between himself and Dr. Sazant as "sexual escapades", his description was not that of sexual abuse but of mutual and consensual activity.

Mr. B was infatuated with Dr. Sazant, his counsel argued, thus, the boy's frequent calls to the doctor. Mr. B recalled the doctor's number years later and called the doctor's number just to hear his voice. She submitted that lends support to that thesis. Mr. B admitted that he missed Dr. Sazant's friendship and his kindness.

Because the boy didn't struggle as the doctor was removing his clothes, and he didn't push the doctor away and because he didn't leave the doctor's home during the sexual abuse, Dr. Sazant's counsel argues that his sexual activity with the doctor, if it occurred, was mutual. Mr. B did not agree that the sexual encounter was mutual or that he was infatuated with the doctor. Dr. Sazant's counsel also noted with regard to the issue of consent to the sexual activity, that Mr. B subsequently went on to have romantic relationships with both men and women. However, the Committee finds Mr. B's sexual orientation irrelevant to the case at hand. Whether he subsequently went on to have bisexual, heterosexual or homosexual relationships has no bearing on his evidence of what happened to him when he was 13 and 14.

There is no "consent" when sexual relations occur between a 13 year old boy and a man in his 40's who is the assistant coach of his basketball team. Dr. Sazant used his knowledge as a doctor to draw the boy closer to him by encouraging him to open up to him about his family problems and his hyperactivity disorder. He became his "friend" at a time when Mr. B experienced difficulties in relationships with his peers. Mr. B's father brought him to his basketball games, although he didn't always stay for them, and placed

his trust in the doctor to care for his son in his absence. Even if sexual activity occurred after Mr. B turned 14, Dr. Sazant was in a position of power, authority and trust over him and Dr. Sazant manipulated that trust for his own selfish ends. As a physician who cared for other boys in his practice, he should have known of the vulnerabilities of a teenager in Mr. B's circumstances. By using a soft voice and purporting to have special knowledge and abilities to help the young boy, he drew him to him, only to take advantage of that naïve trust in a very intrusive and egregious way.

Counsel for Dr. Sazant argues that he can only be found guilty of professional misconduct if his conduct or act is relevant to the practice of medicine, that having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. The Committee accepts that the College must establish that the conduct of the doctor is relevant to the practice of medicine. For the same reasons elaborated in the preceding two cases, the Committee finds that Dr. Sazant's behaviour is relevant to the practice of medicine.

Dr. Sazant's counsel argues that the College has no jurisdiction to consider the complaints of Mr. B as he was not a patient and, therefore, his complaint was not relevant to the practice of medicine. As noted in the case of Mr. D, when a child is sexually abused by a doctor, the profession and the public are interested in having that misconduct dealt with for the protection of the public, that is, child-patients the doctor may come in contact with. Behaviour that undermines public faith in the medical profession is relevant to the practice of medicine.

Summary

The Committee finds that Dr. Sazant engaged in disgraceful, dishonourable, or unprofessional conduct with Mr. B between 1980 and 1981 including kissing him, tying him to the bed, having Mr. B perform oral sex on him, and stroking Mr. B's penis.

(4) Allegations Regarding Patient C

It is alleged that Dr. Sazant engaged in misconduct in a professional respect and acts of sexual impropriety with Patient C, a patient, between 1967 and 1970, including touching his genitals.

Evidence of Patient C

Patient C was born in 1960 and was 48 years old at the time of his testimony in 2007. He was a patient of Dr. Sazant throughout his childhood. He was raised by a single mother and grew up in subsidized housing along with his brothers. He never knew his father.

Patient C was married in 1974 and is the father of several children. He has taken some college and university courses, including three years at a postsecondary institution in Toronto, but has not completed a degree or diploma. Currently, he lives in the Greater Toronto Area, with his wife and children and has worked for 21 years as a caretaker. He recently was promoted to a more senior position. Besides being involved with many things in the lives of his children, he also has his own business and is actively involved with hobbies.

He does not recall seeing the doctor after age 15. When he was seen at an Emergency Department for a finger injury in his twenties, he didn't have another doctor but he said Dr. Sazant was his doctor although he hadn't seen him in years.

Patient C's brother, Mr. L, raked leaves for Dr. Sazant at the age of 10 and he asked if he could go too on one occasion when he was about 8. The doctor came to pick them up at their residence. He described Dr. Sazant's house as having three entrances, a front door, a side door and a back door.

Patient C recounted that he was outside raking leaves with his brother when he was asked inside by the doctor to play pool. He said they went in the back door of the house and went down some stairs to the basement area. While playing pool, the doctor made a

wager with him. If the doctor won, he would get to tickle the boy and if Patient C won, he would get to tickle Dr. Sazant. The doctor won the next game and he came towards him to claim his winnings. He went the opposite way to the physician as he came around the table but Dr. Sazant caught him and put the boy down to the ground and was on top of him holding him down and trying to tickle him. He moved his hands up and down on his torso.

Patient C fought and was not able to get up and the doctor felt below his torso to his penis. Patient C said he panicked and “freaked out”. Dr. Sazant was calmly talking to him telling him that he was only tickling him and they were only having fun because he was “going crazy”. Patient C relates that he told him to get off and he was screaming and fighting and trying to get away. The episode lasted no more than five minutes and he kicked Dr. Sazant in the privates and, when Dr. Sazant moved, he bolted out the back door.

Patient C recalled that his brother was raking leaves and saw him leave the house and knew there was something wrong. He ran down the street and, when he looked back, he saw his brother coming after him and Dr. Sazant’s mother at the door at the side of the house. They looked at each other and she turned and went back into the house.

Patient C ran a long distance and his brother eventually caught up to him when he fell to the ground exhausted and hyperventilating. He said he was in shock and that his brother tried to calm him down. Eventually, Dr. Sazant came up beside them in his car and his brother and the doctor convinced him to get in. His brother repeatedly told him it was going to be okay. He also told him not to tell his mom. On the drive home, Dr. Sazant stopped the car, turned around, and told them not to tell their mother. He also offered money that was to be payment for raking leaves that his brother took but he refused.

Years later, Patient C said he heard a report on TV of Dr. Sazant being charged with sexual offences and the police were asking anyone who knew about these allegations to come forward. He thought he had a moral obligation to come forward, and he did so in

November 1998. He denied knowing any of the other complainants or attending the court proceeding involving Dr. Sazant.

When he went to the police in November 1998, he states that he was ashamed and that he was coming to grips with what happened to him. He told the police that he had been to Dr. Sazant's house a few times, while his brother had been on several occasions. He also said they went on Saturday or Sunday afternoon. However, in his testimony, he told the Committee that he had been to the doctor's home only once. When he was interviewed by the College investigator, he said he had been to the home once or twice on a weekend morning.

Patient C recalled that, when he ran away from the home, he left through a back door that went directly out to the back yard and he was certain of that. He also added a detail that Dr. Sazant's mother watched him run away and as he turned back they exchanged a look that was a "knowing look." Patient C went on to say that Dr. Sazant's mother then turned around and went back into the house and he questioned how a mother could do that when she saw he was a child in need.

In November 1998, he did not tell the police about the doctor touching his penis or groin area. He said it was a very emotional time and that he wasn't lying to the police but he was not telling the whole story. He did know that the doctor fondled him, but he told the police: "...there seems to be a mental block here at times, but I know that he assaulted me." Because of things that previously happened to him that were "part of this" he did not tell the police the whole story. He said he was not comfortable telling the police the whole story at that point in his life. He did not tell them that he had been held down and touched in the groin area at that time.

During cross-examination, evidence was elicited that when he was 11 or 12, he got a piece of glass in his buttock. He recalls the wound being opened and stitched up at the hospital and he recalls that he was hospitalized for 5 or 6 weeks.

After he was discharged from the hospital, he recalls going to Dr. Sazant's office which was either at Raxlen Clinic on Parliament Street or the one at College and Euclid Street and that his mother waited in the outer office while he was taken into a secondary office to be seen. In cross-examination, Patient C claimed that he thought he was sexually assaulted during this examination. He thought something penetrated his anus during this examination and could not say what it was.

However, when he was interviewed by the police in February 1999, he told them: "Something was put up my ass and I don't know what it was, whether it was his finger or his dick, I don't know."

Patient C also told the police in the February 1999 interview that he did recall the wager and he recalls the doctor holding him down but he does not recall whether or not he tickled him or what he did. Patient C claimed that he was very emotional at the time and not thinking clearly. He also said that, at the time of the meeting with the police, he was uncertain about whether or not the tickling took place. He claimed he became more comfortable talking about the abuse as time went on and so extra detail was recalled.

When he saw the College investigators in 2005, he added the detail that Dr. Sazant was touching his genitals and rubbing his body. In his interview with the College, Patient C said that, if Dr. Sazant won the pool game, he would get to tickle the boy but if he won, he would get a reward. This detail was different from what he reported in his testimony and with the police.

He agreed that the detail of saying he kicked Dr. Sazant in the groin was not in his two statements to the police or in his statement to the College investigator. He recalled this act and told his support person at the College that he had more information to report to the College. He then called the College investigator and left a message but there was no return call. Although it was noted that the investigator did return his call and leave a message, Patient C said he did not know that.

In his interview with the police, he recounted that his brother Mr. L and he were walking away from the doctor's house one day and Mr. L was very upset and crying and saying to him repeatedly, "Don't ever tell Mom, don't ever tell Mom", but I didn't know what he was saying at the time." Patient C subsequently said that this incident with his brother was during the time when he ran away from Dr. Sazant's house. His brother was upset and crying at the time as well.

He reported to the police that he stopped seeing Dr. Sazant when he was 14, or perhaps earlier, 11, 12 or 13 years old. He also told them he might have seen the doctor once or twice after that. He denies having a full physical with Dr. Sazant in June, 1977 as he was outside of Toronto at that time. He said that he went on a May weekend to work at a camp in the lower Algonquin area where he was a camp kitchen worker and he came back to Toronto briefly in May and returned to the camp on the May holiday weekend and did not return to Toronto until late September, 1977. He denies that he saw Dr. Sazant or told him he was going to work at the camp. He was not present in the city at the time and did not see the doctor for injections. He also denied seeing the doctor due to fatigue and lower abdominal pains in April, 1978 or asking him to check skin redness around his testicles and thighs. In his cross-examination, Patient C reported that he did not go to see Dr. Sazant at his Lawrence and Bathurst Street office but he may have taken his mother there. He did recall seeing another doctor at the Lawrence and Bathurst location once or twice and he didn't return there afterwards. However, he told the police in his interview that he may have seen the doctor at that office or his last appointment with him may have been at the office on Euclid and College Street. Patient C later suggested that he didn't see another doctor at the Lawrence and Bathurst Street location. His comments about where he last saw Dr. Sazant as a patient varied. However, when he went to the Emergency Department in May, 1982, while in his twenties, he told them that Dr. Sazant was his family doctor.

Patient C claimed that his brother, Mr. L, told him in October 1997, that he too had been assaulted by Dr. Sazant. He said that he didn't divulge his own experience with Dr. Sazant to his brother. During both of his interviews with the police, Patient C maintained

that he had not told his brother what had gone on between him and Dr. Sazant but when he came to see the College investigator, he told them that his brother had known what Dr. Sazant had done to him. He told the police that his brother Mr. L had not told him what had gone on with Mr. L and Dr. Sazant. However, when he saw the College investigator, he told him that his brother told him that the abuse was anal sex. Patient C explains the variance in his responses to the fact that he was very uncomfortable dealing with the issues with the police.

Patient C attributed the suicide of his brother, Mr. L, to Dr. Sazant's abuse. He also claims his own suicide attempt, as a teen, was due to not only a break-up with a girlfriend but also to the abuse of Dr. Sazant. He also acknowledged that there was more than one predator in the lives of he and his brothers and that the problems of two of his other brothers were not due to Dr. Sazant as he told the police initially, but other people in their lives at the time.

Evidence of Dr. Sazant regarding Patient C

Dr. Sazant recalls that, in the summer of 1971, he had Mr. L work for him at the request of Mr. L's mother. Mr. L came to his home and did odd jobs for him as he had a back problem. Dr. Sazant had lumbar disc degeneration and that caused him some difficulty. He was prescribed a back brace and advised not to lift heavy weights because it would aggravate his condition. Dr. Sazant explained that he continues to wear the back brace occasionally as he still has a problem with his back, especially if he forgets and lifts anything too heavy.

Mr. L came to Dr. Sazant's house alone, except on one occasion when his mother asked him if he could take her other son (Patient C) with them, as he had nothing to do that day. When the boys finished working in the yard, they came in and Mr. L asked if he could play pool with the doctor and his younger brother, and Dr. Sazant agreed.

They played a couple of games of pool of ten to fifteen minutes each and Dr. Sazant recalls Patient C making a particularly good shot and saying, "I'm a really great player,

aren't I?" Dr. Sazant said he responded by walking by and tickling his ribs and saying not really such a great player, it was just a lucky shot. When he was tickling his ribs, Patient C said not to do that so he stopped.

Dr. Sazant did not have any recollection of his hand touching Patient C's groin area, or him crying at any time. He said that he had no back door at that house as Patient C had testified. He continued to see Mr. L until he was married at the age of 23 and he recalls being invited to his wedding. Although he didn't go because his mother was quite ill, he sent a gift for which he subsequently received a thank you note.

Dr. Sazant recalls seeing Patient C again in his office after the day he had been to his home and, on this occasion, he was checking a wound on his buttock. He recalls seeing him at the Raxlen Clinic. He reported that he always saw children with their parents in the room and that his mother was with him. Although Patient C claimed he was hospitalized for the wound, Dr. Sazant recalls that he was seen in the Emergency Department and sutured. He recounted examining Patient C's buttock as he stood beside his mother. He said the boy's mother lifted the boy's trouser up or lowered his pants down for him to feel the scar at the junction of the upper thigh and the buttock and it felt like a healing scar. He denied that Patient C was examined on an examining table but that he was standing by his mother. Dr. Sazant also explained that, at the Raxlen Clinic office, there was no separate room, just an archway without a door with a curtain at one end of the examining table. He denied examining Patient C's anus or inserting anything into it. Despite the intervening 36 years and the routine nature of the medical appointment, Dr. Sazant said that he recalled exactly where the wound was, how it was healing and that there was no reason for concern.

When presented with a copy of a consult letter concerning Patient C from a cardiologist he saw when Patient C was 15, Dr. Sazant said that referral was made without seeing the boy as his mother called him requesting a consult with this particular specialist as Patient C was having chest pains. Notation regarding two other visits of Patient C to his office was also made. He was unable to explain why he did not have the originals and why he

only had a photocopy of these visits. Dr. Sazant explained that he saw Patient C in 1977 and 1978 at his office at College and Euclid. In 1977, Patient C was 16 and a half and he was seen for a camp physical to be a kitchen worker. He submits that he did do a physical and gave him a tetanus and polio shot, contrary to Patient C's evidence.

Dr. Sazant reviewed his notes of the 1978 visit to his office of Patient C and stated that he recalled that visit very well. On that occasion, Patient C asked him to look at some redness of his testicles and his upper thighs.

He also maintained that tickling young boys was a type of bonding in a non-sexual way and that he saw it as quite appropriate behaviour to tickle young boys. It said that the tickle sense is developed through evolution to have a purpose, which is bonding between an adult and a younger person in a non-sexual way. He denied that he touched Patient C's penis while tickling him.

When he moved from the College and Euclid Street office to the Lawrence and Bathurst Street Office in the late 1970's, he photocopied most of his patient files as there was a period of overlap when patients were seeing him at both locations. He explained that Patient C's original file must have been destroyed by mistake, rather than his photocopy. This was the only file that was a copy of a file, Dr. Sazant said. The physician also maintained that he destroyed files after ten years and, despite that habit, after he learned of the allegations of Patient C against him, he produced notation of two office visits, albeit copies and not originals that were 22 years old. He claimed that as his chart was thin, it was left in.

Dr. Sazant attempted to put in evidence of other witnesses during his testimony regarding Patient C and had a difficult time answering the questions put to him at times as he tried to argue his case instead. Dr. Sazant used documents during his testimony that were not evidence in the case and he needed to be reminded to put them away.

Other Witnesses

Evidence of Ms. F

Ms. F was the former kitchen director of the camp where Patient C worked, and she testified that kitchen workers required a physical examination and a medical form completed prior to working in the kitchen. Patient C would have required such a form.

Evidence of Mr. G

Mr. G was a former neighbour of Dr. Sazant and he testified that there was no back door to Dr. Sazant's house as described by Patient C.

Credibility of Patient C

The Committee accepted as credible Patient C's testimony that he was tickled at Dr. Sazant's home without his consent. However, there were several areas where the Committee had problems accepting his version of events. Patient C changed his story several times and, as he did so, more drama and embellishments were added that served to detract from his credibility. For example, he told the police that he recalled Dr. Sazant holding him, and that, when he was rebuked, the doctor stopped. In the second interview, he reported that he did not recall how he broke free from the doctor but, during the hearing, he testified that he kicked him in the groin in order to escape the physician.

When questioned about why he was not more forthright with the police in his report of what transpired between Dr. Sazant and himself, Patient C gave several responses. Some of them related to his discomfort in disclosing what had happened and other responses indicated he did not remember at that time. If he lied or withheld information from the police, he said he did not do so intentionally but rather did so, "accidentally".

Although the College elected not to pursue the allegations of anal penetration in Dr. Sazant's office, defence counsel noted that his credibility was called into question when it was pointed out that he acknowledged that he did not tell the police that his groin had been touched during a tickling episode because of being upset, but in the same interview

was able to tell them about a more intrusive act, that Dr. Sazant had put something "...up my ass and I don't know what it was, whether it was his finger or his dick, I don't know." He was able to talk about an intrusive event but not one that was less intrusive. In addition, his version of what happened varied with each interview he had with the police or the College investigator. Although allegations of anal penetration were not being pursued, Patient C's various versions of those allegations detracted from his overall credibility.

Patient C changed his recollection of how many times he was at Dr. Sazant's home from once to twice. He also reported that he was certain that he exited the house after escaping from the physician through a "back" door. The Committee accepts the evidence of Dr. Sazant and his neighbour that there was no back door to that house, just a front and side door.

The Committee had difficulty with Patient C's embellishments to his version of events and his credibility suffered because of that.

Credibility of Dr. Sazant

Dr. Sazant confirmed that there was an episode of tickling Patient C in the ribs and he had a remarkable ability to recall exactly words that were spoken over 35 years ago in a single encounter with a 10-year old boy playing pool in his basement. His recall of a contact in his office of a boy with a scar on his buttock including exactly how he examined him, what the scar was like, and what he said to him is similarly remarkable. The Committee had difficulty accepting that he would recall this interaction that had nothing particularly unusual to distinguish it from thousands of patient encounters that the doctor has no doubt had in the intervening years.

Dr. Sazant had a photocopy of records of two visits that Patient C made to his office following the tickling incident and the allegation of anal penetration at the doctor's office. Dr. Sazant explained that Patient C's original file, along with other patients, was photocopied when he was seeing patients at two different locations around 1979 when his

Lawrence and Bathurst Street office was being renovated. Going to the trouble of photocopying a file of a healthy patient who did not see Dr. Sazant regularly seemed unusual to the Committee. In addition, Dr. Sazant clearly told the Committee that he destroyed files after ten years and it seemed a coincidence that he would maintain a record of two visits only, for years past that 10 year cut-off, on a patient who claimed that he did not see the doctor again after the last office visit with him. In addition, that record was not original, but a photocopy and thus not in a condition for forensic testing. The Committee was unable to reconcile this discrepant information. However, Dr. Sazant's version did not serve to convince the members that Patient C was lying when he said that he didn't see the doctor again after the incident in his office following having glass embedded in his buttock.

Rather than answer questions directly, Dr. Sazant would frequently try to insert what the complainant said on other occasions. His inability to answer questions in a straightforward way detracted from his credibility. In fact, it seemed to the panel that Dr. Sazant had memorized what the complainants had said on other occasions and would try to answer with that information, rather than with his own recollection of what occurred. He began to read from a document that he brought to the hearing of the transcript of Patient C's interview with the police. Dr. Sazant's evasiveness and his attempts to read in comments the witness had made on other occasions, rather than being forthright and honest in describing or recalling his part in the scenarios involved, detracted from his credibility.

Credibility of Other Witnesses

The Committee accepted the evidence of other witnesses testifying on Dr. Sazant's behalf.

Legal Issues and Findings with respect to Patient C

Patient C's account of what transpired at Dr. Sazant's home that day was not consistent. His accounts were embellished with the telling of them and details varied in important ways. For example, he added drama by saying that he kicked Dr. Sazant in the groin, but

this rather notable point was not mentioned in his first versions. Similarly, he said he and Dr. Sazant's mother exchanged a "knowing" look when she watched him run away from their home. He highlighted more drama by saying that he didn't understand how someone could turn away from a young boy in distress. Comments such as these did not enhance his credibility.

Patient C's story varied from those of the other complainants in one remarkable way. In his case, there was no period of time where Dr. Sazant spent time gaining his trust, found common areas of interest, or proceeded in a tentative way to touch his body to gauge his reaction as the Committee found he did with other boys. According to Patient C, the doctor proceeded immediately from a tickle to touching his groin.

Patient C's certainty that he ran out of the back door of the doctor's house when there was no back door suggested that his adamant claim in other areas may not be accurate either.

The Committee was unable to resolve the issue regarding Patient C's claim that he did not see Dr. Sazant again after the office visit when his mother took him to have the wound in his buttock assessed. The coincidence with regard to a photocopied piece of paper annotating two visits by Patient C that he said did not occur, and that Dr. Sazant claimed survived 22 years, despite regular purges of charts over ten years old was unresolved in the Committee's view. The Committee noted that Patient C said he saw another doctor at the Lawrence and Bathurst office on two occasions, however, those notes were not available although two visits were recorded by Dr. Sazant. No finding was made on this particular issue, although questions about the credibility of both parties were raised.

Summary

The Committee concluded that the evidence of Patient C did not satisfy the *Bernstein* standard of being clear, cogent and convincing. Accordingly, the Committee finds that

the allegations of misconduct in a professional respect and sexual impropriety regarding Patient C are not proved.

Other Legal Issues

Similar Fact Evidence

Counsel for Dr. Sazant takes the position that the Discipline Committee is only entitled to consider the allegations of each of the four complainants separately. The Committee has done that and made its findings with respect to each one separately and independently. However, the Committee is of the view that the sum of the evidence satisfies the criteria for admission of similar fact evidence and adds weight to the findings. The evidence related to the use of ropes was reliable and consistent and it did have similarities that were quite specific and far from generic. In addition, the potential for prejudice does not outweigh the probative value of the evidence. Nor does the Committee find that he has committed professional misconduct on the basis of general disposition reasoning.

The similar fact evidence in this case bears close scrutiny and is related to the use of ropes as well as evidence of the behaviour of Dr. Sazant in nurturing relationships with the children.

The Use of Ropes

R. v. Shearing, [2002] S.C.J. No. 59 at para.70 states that: “The theory of similar fact evidence turns largely on the improbability of coincidence.”

Although the Committee made its findings of professional misconduct independently with respect to each of the complainants, the similar fact evidence of the white ropes in this case serves to bolster the Committee’s findings with regard to Mr. D, Patient A and Mr. B. It is unlikely that this detail is just a coincidence. In all three cases, the ropes were used as part of the sexual activity separated by years. The Committee concludes that Dr. Sazant’s use of ropes was consistent over time.

It is highly unlikely that three complainants, who did not know each other or each other's stories, would report the use of ropes as described unless they had been used. There was no evidence that the complainants knew each other, colluded or knew any details of other sexual abuse allegations. The evidence was to the contrary. Although Patient A acknowledged that he was told there was "another one", there is no evidence he knew anything about that person's experience. Mr. B heard a media report that allegations of sexual abuse had been made against Dr. Sazant, yet he didn't know that it pertained to children, or that the sexual activities included bondage, and he testified about his experience involving white ropes, as did the other two, Patient A and Mr. D. The use of the ropes was not exogenous evidence but a peculiar and distinctive feature central to the three complainants' stories.

The question is whether or not Dr. Sazant engaged in sexual misconduct with the boys. There is a high degree of similarity in the use of the ropes in three cases. The potential for prejudice does not outweigh the probative value of considering the use of the ropes. Dr. Sazant was not taken by surprise with the allegations and he was not limited in his response to each similar fact by the collateral issue rule. Each incident was explored from the defence perspective to the extent that the defence considered it to be in its interest to do so [*R. v. Shearing, supra* at para.70].

In Patient A's case, from about 1972 to 1978, he was routinely tied to the bed on many occasions and Dr. Sazant rubbed his penis against his leg to the point of ejaculation.

Mr. B described ropes being brought out the first time he was in Dr. Sazant's home in the fall of 1980 and, when he objected, they were not used when Dr. Sazant straddled him and forced him to perform oral sex. The second time that he was at the doctor's home, the ropes were used for part of the time that Dr. Sazant sexually abused him and, although they were loose and he described Dr. Sazant being able to place his hands in the loops of the ropes too, they were nonetheless used.

In the case of Mr. D, he said he and his friend Mr. N tied up Dr. Sazant on two different occasions and, on the last occasion, he was tied up after the doctor was untied. In the last instance of tying up, he lightly hit the physician's legs with a belt and, subsequently Dr. Sazant did the same to him when he was tied up. These acts took place in the fall of 1991.

On searching Dr. Sazant's home, the police found ropes, as well as bondage magazines with ads for ordering bondage material. Ropes and belts in bags were found in the closet and in dresser drawers. Notwithstanding Dr. Sazant's claim that the ropes were used for tying up newspapers and the evidence of his housekeeper that the ropes were used for the same purpose, the Committee is persuaded that they had a role in his sexual activity with three of the complainants. The ropes were found in the doctor's most personal/private space, his bedroom dresser and closet. When pre-cut ropes of a certain thickness with loops at the ends are found in a home with bondage magazines and three witnesses independently describe activities that are fetishistic and/or sexual in nature involving the use of the ropes, then it is a reasonable conclusion that the ropes were used for sexual purposes.

Paraphrasing from *R. v. Stewart*, [2004] B.C.J. No.195 (C.A.) at para.40, the underlying unity lay in the various types of sexual activity and the circumstance of the appellant's abuse of his authority. In the *Stewart* case,

[T]he appellant's sexual activity with R.D. was properly admissible as similar fact evidence to be considered in relation to the other counts involving the other complainants. I therefore see no error in the trial judge considering the evidence of all the other complainants relating to each charge or count concerning an individual complainant.

Dr. Sazant's counsel argues that, in the case of Mr. D, the tying up with ropes was in the context of a fun game that everyone enjoyed. Notwithstanding the fact that Mr. D admitted that he thought this was a fun activity, he was nonetheless at a pre-pubertal age, given the testimony regarding his age and weight. When the "game" with Mr. D and Mr. N is examined in the context of Dr. Sazant's use of ropes in clearly sexual circumstances

over a period of many years, his possession of bondage magazines, and the fact that Mr. D was in the same age range and sex of the other victims, the Committee concludes that the use of ropes in the incidents with Mr. D and Mr. N had sexual overtones for Dr. Sazant.

Dr. Sazant's Nurturing Relationships with the Complainants

The Committee examined the evidence in light of similar fact evidence and the conclusions of the court in *R. v. Stewart*. The children Dr. Sazant abused were vulnerable in some way. Dr. Sazant made friends with his victims and used video games, an interest in sports, a soft and kind manner, work for money, a dog, a "special interest" in them or other means to draw the children to him. He used time to create comfort and trust in him by the children. This pattern in relation to each child supports as similar fact evidence the testimony of Mr. D, Patient A and Mr. B regarding the behaviour by Dr. Sazant.

CONCLUSION

The Committee has determined that Dr. Sazant engaged in acts of professional misconduct with three boys, one of whom was his patient. He tied up and masturbated on the leg of the first boy, Patient A, whom he abused beginning in the early 1970's when the boy was about 8 years old. Although the Committee was not able to come to a determination about exactly how often this occurred, we are satisfied that Dr. Sazant abused him in a similar way on multiple occasions over a period of years.

The next boy, Mr. B, was 13 in 1980 when Dr. Sazant forced oral sex on him after trying to tie him up. On the second occasion when he engaged in oral sex, ropes were used. Although this boy was not a patient, he was on the basketball team that Dr. Sazant was coaching and therefore in a position of trust and authority over him.

In 1991, the next child, Mr. D, was in grade 7 and 8 at a school near Dr. Sazant's home when Dr. Sazant tickled him repeatedly on the boy's visits to his home. With time, Dr. Sazant stroked his bare back and went on to fondle his penis briefly. After Mr. D and a friend tied up Dr. Sazant on two different occasions, Dr. Sazant tied him up and used a

belt to lightly hit his legs. Alcoholic beverages were given to the boys by Dr. Sazant during the two sessions.

The Committee did not conclude that the fourth complainant's evidence reached the level of proof consistent with the *Bernstein* standard of being clear, cogent and convincing.

Dr. Sazant used various ways to engender positive feelings from those boys he was interested in. In the first case, Patient A, he was very kind to him and his parents and sister and gave them "prescriptions" for chocolate bars or vitamins when they came to see him at the office. They would redeem the note downstairs in the pharmacy and the item would be added to the doctor's bill. He had a fridge at the office and would offer them a pop. He also kissed the boy when they came to the office. The boy's parents held the doctor in high esteem, as did Patient A. After Dr. Sazant began going to the family's home for Sunday dinner at noon on a regular basis, the doctor started to take him on outings for various reasons. He also used the poverty of the family to his own ends in paying for some of the boy's hockey equipment and then having the child to his home to pay off the debt in the guise of work, that ultimately proved to be motivated by the doctor's desire to sexually gratify himself.

In the case of the second child, Mr. B, Dr. Sazant was the assistant coach of his basketball team. The parents of the children he coached and the youth organization trusted him to protect and not harm their children. He took advantage of that trust as he developed a special relationship with Mr. B and purported to have knowledge of his problems because of his medical background. When he sexually abused him on two occasions, and when the child pulled back and made excuses not to come to the doctor's home, the doctor became more distant, less caring and withdrew the attention that in the Committee's view, was the "hook" for the vulnerable child in the beginning.

By the time of the incidents with the third victim, Mr. D, almost 20 years after the sexual abuse of the first, Dr. Sazant had moved his home to a location near a school attended by children in the age range he was interested in. He used video games, pop, a dog, work for

money and an interest in sports to relate to the children. His home became a place where children would gather during lunch hour and at other times of the day.

In each of the cases, the doctor used his demeanour as a caring and fun individual to draw the boys to him. He tested their reactions to his touch by tickling them or “play-wrestling” with them. By nurturing relationships with them, he set the stage for his subsequent abuse of them and, for at least two of the boys, that abuse was particularly intrusive and demeaning. In the first two cases, the doctor was in a position of trust with the boys, however, he found his next victim, a stranger, in a large pool of boys going to the nearby school. Walking his dog through the school parking lot on the way to the park during school days brought a boy to him, Mr. M, who eventually became a dog-walker and invited other boys to the doctor’s home, one of whom was his next victim.

Besides being adept at finding the “hook” or something of interest to draw each of his victims to him, the Committee noticed how the doctor distanced himself from his actions in his thinking. For example, he said he saw himself as the same age as the boys psychologically and emotionally and said that the boys didn’t see an age differential either. He didn’t see himself as someone decades older than them and in a position of power and control. This thinking no doubt contributed to his minimizing his actions and being able to use the boys for his own sexual pleasure.

In addition, the Committee repeatedly heard Dr. Sazant cast himself in a passive role where the child was always the initiator of the action or the activity. He talked about the boys being “persuasive”, as if somehow he was a passive player, or even a victim himself and he could not take charge of situations. By thinking of himself in this light, Dr. Sazant absolved himself from blame for his actions. It was the children who were the aggressors, following along with his perspective. That clearly was not the case.

Dr. Sazant was less than honest and forthright in his responses during his testimony. Rather than answer the questions put to him, he repeatedly tried to read from statements that the complainants had made at another time, or report previous testimony they had

given or cast them in a negative light. His adeptness at doing this during his testimony, rather than simply responding truthfully to questions, suggests a facility to control situations for his own ends.

In summary, the Committee find the allegations in the Amended Notice of Hearing, relating to Mr. D, Patient A and Mr. B are proved. The Committee find the allegations relating to Patient C are not proved.

There is no doubt on the evidence that the doctor's actions caused harm to three of the complainants in this case. The profession and the trust that the public places in doctors suffers as well. The Committee directs a penalty hearing be scheduled at the earliest possible date.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Marvin Sazant, this is notice that the Discipline Committee ordered pursuant to subsection 45(3) of the *Health Professions Procedural Code* (the “*Code*”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended that: no person shall publish the identity or information that could disclose the identity of patients whose medical records have been the subject of evidence; no person shall publish Dr. Sazant’s home address; and, that no person shall publish any information relating to any psychiatric or mental illness that may be disclosed relating to Dr. Sazant other than the date of the diagnosis and the fact of the diagnosis of any such illnesses.

The Committee also made an order to prohibit the publication of the identity of the complainant witnesses and any information that could disclose their identity pursuant to subsection 47(1) of the *Code*.

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

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

- iii) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; and
- iv) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

Indexed as: Sazant (Re)

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. MARVIN SAZANT

PANEL MEMBERS:

DR. M. GABEL (Chair)
E. COLLINS
DR. C.J. CLAPPERTON
DR. J. DOHERTY

Penalty Hearing Date: June 2, 2009
Penalty Decision Date: September 2, 2009
Release of Written Reasons on Penalty: September 2, 2009

PUBLICATION BAN

PENALTY AND REASONS FOR PENALTY

The Discipline Committee of the College of Physicians and Surgeons (the “Committee”) heard the penalty phase of this matter at Toronto on June 2, 2009 and, at the conclusion of the hearing, reserved its decision. The Committee was asked by counsel for Dr. Sazant, by letter dated July 29, 2009, to consider additional written submissions as to costs. Counsel for the College, by letter dated August 6, 2009, objected to the filing of additional costs submissions.

In its written decision and reasons delivered on February 20, 2009, the Committee made the following findings:

- Dr. Sazant engaged in disgraceful, dishonourable, or unprofessional conduct with Mr. D, including tying him up when he was 12 years old, hitting him with a belt, having Mr. D tie him to a bed, touching Mr. D’s penis, and providing him with alcohol.
- Dr. Sazant engaged in misconduct in a professional respect, acts of sexual impropriety, and disgraceful, dishonourable or unprofessional conduct with Patient A. The Committee found that Dr. Sazant kissed and hugged him, tied him to a bed, rubbed his leg on multiple occasions with his penis and ejaculated on Patient A.
- Dr. Sazant engaged in disgraceful, dishonourable, or unprofessional conduct with Mr. B, including kissing him, tying him to the bed, having Mr. B perform oral sex on him, and stroking Mr. B’s penis.

SUBMISSIONS ON PENALTY

As was noted in the decision on finding in this matter, the Committee is aware that “sexual abuse” has a specific meaning under the *Regulated Health Professions Act, 1991* (the *RHPA*) and that there were no findings of “sexual abuse” against Dr. Sazant. The Committee has, at times, used this term to describe improper activities of a sexual nature involving the physician, but is aware that the mandatory penalty of revocation for a

finding of “sexual abuse” of a serious nature under the *RHPA* does not apply in this case. The Committee considered what the appropriate penalty and costs order should be, having regard to the legislation that applied at the time of the findings, and having regard to the findings themselves.

Counsel for the College argued that because Dr. Sazant engaged in the most serious form of professional misconduct (planned, deliberate and repeated sexual misconduct with three boys with whom he stood in various positions of trust and authority, including one boy who was his patient), revocation is warranted.

College counsel maintains that only revocation would protect the public, give the public confidence in the self-regulation of the medical profession and send a message to Dr. Sazant, and the entire profession, that this kind of conduct by a member of the profession simply cannot and will not be tolerated. It is the only penalty that will properly reflect the abhorrence of the profession and the public for Dr. Sazant’s conduct.

Dr. Sazant’s counsel contends that revocation is not warranted or appropriate, as this is not the most serious of cases. A suspension in the order of three months would serve to address the goals appropriate to penalty. It was submitted that issues, such as the dated nature of the findings, the lack of new allegations in the last eighteen years, Dr. Sazant’s otherwise unblemished record of service to the medical profession and his devotion to his long-time patients should be factored into the decision.

The Committee took into account all of these factors in arriving at their penalty decision.

DECISION AND REASONS FOR PENALTY

General Principles of Penalty Decisions

In the case of *Moore v. The College of Physicians and Surgeons of Ontario*, [2003] O.J. No. 5200 at para. 7, the Divisional Court outlined considerations with respect to penalty:

In our view, the sentencing process involves a balancing of various factors with the protection of the public being the guiding principle. These factors include general and specific deterrence, proportionality, as well as the need for the College of Physicians and Surgeons to maintain its credibility in the community and with its members as a self-governing body.

As noted in *Tse v. College of Physicians and Surgeons of Ontario* (1979), 23 O.R. (2d) 649 (Div. Ct.) at pp. 8-9, the proportionality of a penalty involves consideration of the seriousness of the conduct, which includes the impact of the conduct on its victims. The seriousness of the misconduct is an important factor which must be considered.

Factors Considered by the Discipline Committee

a) Seriousness of the Finding of Professional Misconduct

Dr. Sazant was found to have engaged in sexual misconduct with three boys while they were between the ages of 8 and 14 and with whom he was in a position of trust and authority. In the case of the boy who was his patient, his actions were deliberate, calculated and repeated over a considerable period of time. In addition, the acts were intrusive, degrading and occurred before or at the time the boys were developing their own sexuality. The gravity of the misconduct occurring during these impressionable ages cannot be discounted. The Committee concludes that the misconduct is among the most serious that can be perpetrated by a physician.

b) Victim Impact

Letters from two of the complainants highlighted the effect the sexual misconduct has had on their lives. Their own words express it most eloquently. From Patient A:

As a child he stole my trust, my innocence, and my belief that people were good people, who were not supposed to hurt children. I was a terrified frightened little boy, who didn't want to go with him, but was told to. "Why don't you want to go with the Doctor, go with him [...], he will buy you something nice." My family thought that he could move the world for them. I felt so alone, and so scared, and I couldn't tell anyone about it. I used to think "why me?" What did I ever do to him, that would make him sexually assault me over and over again. Sure he bought me nice things, and hockey equipment, and took me places, but boy did I ever pay a high price for it.

He continued:

I have problems trusting anyone who cares, or tries to be nice, thinking there is an ulterior motive for their kindness. He made me feel dirty and worthless. While everyone thought what a great guy he was, they couldn't see what I was going through on the inside. While other kids were busy playing and having a good time, I was being sexually abused, and I had to keep the dirty secret to myself, afraid to tell anyone.

And additionally:

I can't sleep. I don't eat, I suffer from depression, and sometimes wonder if I died, then maybe all the horrible memories, and pain, would go away. I feel like I am damaged, and that I am not a good enough man for my family. You took away more things than I can name.

Mr. B wrote:

It very much pains and embarrasses me to admit that I loved this man for what I thought was unconditional friendship and loyalty. Once I was subjected to "conditions" that went along with this friendship, I was truly devastated but needed the guidance and love so bad that I ignored the sexual costs.

He continued:

It constantly haunted me that Marvin Sazant would likely be doing this to other boys and that because of my fear, I was unable to do anything to stop it. My later relationships with both women and men resulted in identifying that I had an inability to trust anyone who got close to me.

And further:

There were many things I did to abuse myself because I felt unworthy of anyone's love. My sexual life has been and still is difficult since flash backs and triggers make it hard for me to relax and to trust.

The Committee considered the victim impact statements as well as comments from complainants that were made at the time of their testimony with regard to the effect of Dr. Sazant's abuse of them. The Committee believes, on the evidence that it heard, that the consequences for at least two of Dr. Sazant's victims have been life-altering and pervasive.

c) Dated Nature of the Offences

Counsel for Dr. Sazant argued that the dated nature of the offences, occurring from 18 to 37 years ago, requires that the Committee consider and give weight to the conduct and good character of Dr. Sazant in the following years.

Mitchell v. British Columbia College of Teachers, [2003] B.C.J. No. 3056, involved a female teacher who had sex with a 14 year-old student and lived an exemplary life in the following 10 years. The Court found that the passage of time between the date of the offence and the penalty hearing was a relevant consideration and ought to have been taken into account by the panel in determining the appropriate penalty. The Court held that the evidence of good character in the years intervening between the time of the offence and the penalty was relevant to the determination of the appropriate penalty.

Reference in the *Mitchell* case to *Branigan v. Yukon Medical Council* [1974] Y.J. No. 133 (S.C.) at paras. 82 and 84 brings to light other factors to consider:

In this case, considering the passage of time, the concern over protection of the public is somewhat circumscribed since the appellant has been practicing since 1977 and held in high regard. There is no evidence of a need for specific deterrence. There is no evidence of a need for rehabilitation. There is no suggestion that he poses a risk to the public. There is no indication of repetitive conduct of a similar nature....

The passage of time was a point raised by the appellant's counsel before the Temporary Council but the Council seemed not to have given consideration to it since its reasons could easily be read as referring to conduct that occurred just yesterday and not seventeen years ago.

In those cases, there was no need for rehabilitation or suggestions that there was an ongoing risk to the public; however, that is not the finding of this Committee. Dr. Sazant's comments and demeanour in his testimony are indicative of several concerns that were clearly not in evidence in the *Mitchell* and *Branigan* cases. The Committee does not find that the passage of time has mitigated risk. Some of the risk that Dr. Sazant poses to young male patients has been managed because of the restrictions imposed on his practice, which were put in place when he came to the attention of the Toronto Police.

In his testimony, Dr. Sazant minimized his sexual activities with the boys and distanced himself from his behaviour in various ways. He cast his sexual activities as being in the form of play. He did not see himself as decades older than the boys, as an aggressor or as someone who had power and control over the boys. Instead, he repeatedly cast himself in the role of the passive player, or even as the victim himself, and unable to stand up to the boys who were "persuasive". He said that he saw himself as the same age as the boys psychologically and emotionally and claimed that the boys didn't see the age difference either. His cognitive distortions, minimizing, and lack of insight do not inspire confidence that his risk to young boys has been reduced because of the passage of time.

R. v. J.S.S., [1995] O.J. NO 3894 (C.A.) indicates at para. 7 that the mere passage of time does not entitle the appellant to a lesser period of incarceration for his offences, because

it was clear that the appellant had not reformed his conduct in the intervening years. Similarly, in *R. v. J.R.*, [2003] O.J. No. 3458 (C.A.), the Court said that even though the offender posed little risk of reoffending, the passage of time does not diminish the need for a denunciatory sentence given the seriousness of the crimes. The Committee considered these comments in determining what the appropriate penalty should be in this case.

In the case of *R. v. W.W.M.*, [2006] O.J. No. 440, a police officer who had an exemplary record of twenty years service was convicted of two counts of incest involving his sisters that had taken place 30 years earlier. The Court of Appeal, at para. 19, in supporting the sentencing judge, said he was correct when he concluded that:

[T]he appellant, though young, was relatively older than the victims, and that an exemplary life led in the years intervening between the abuse and the sentencing must be accompanied by expressions of genuine remorse and the acceptance of responsibility for one's actions in order to have a proper mitigating effect.

The Committee considered the mitigating effect of the passage of time with these factors in mind. No expressions of remorse or evidence of any rigorous attention to the factors that led to the sexual abuse in the first place were heard by the panel. On the contrary, Dr. Sazant's demeanour and testimony confirm the impression that the passage of time has done nothing to offset the harm he has wrought. Indeed, the Committee could not conclude that the physician had any empathy or understood the damage he caused his victims. There is no evidence of inappropriate sexual activity since 1991, but because of the repeated and serious nature of the sexual misconduct, the lack of remorse and the need for a denunciatory penalty, the Committee does not conclude that the mere passage of time has a mitigating effect such that Dr. Sazant should be permitted to continue to practise.

d) Evidence of Risk

Dr. Sazant's counsel argues that there is no evidentiary foundation upon which the Committee could make the finding that Dr. Sazant presents a future risk to his patients or the public. The Committee disagrees. His testimony displayed a lack of insight and a failure to take any responsibility for his behaviour with the boys. Furthermore, his cognitive distortions contributed to the sexual abuse and allowed him to distance himself from the enormity of the harm he caused. Therefore, the Committee views Dr. Sazant as continuing to pose a risk to young boys. The Committee does not have before it any reliable evidence of insight or recognition by Dr. Sazant of a need for treatment and rehabilitation that would ameliorate the Committee's concern about Dr. Sazant's future conduct, given the sexual misconduct demonstrated over several years with three separate young victims.

e) Lack of Criminal Conviction

Dr. Sazant's counsel submits that the lack of a criminal conviction in this case is a relevant factor to be considered in determining the appropriate penalty. In *Mitchell*, two civil juries and a judge did not accept the evidence of the complainant, and the court held that this was relevant and offered some indication of the public's view of the event. The same principle applies in this case, counsel argues. The Committee is not aware of the considerations which factored into the decisions of the Crown and judges in each of the criminal matters, or the potentially myriad reasons for concluding that Dr. Sazant's case should not be pursued in the criminal court system. There were no evidentiary hearings and, had there been, they would have been considered by this Committee. It would be an error on the part of the Committee to conclude that, because the cases did not proceed in the criminal system, the penalty should be less than otherwise appropriate. The finding of this Committee, after a lengthy and contested hearing, was that Dr. Sazant committed acts of professional misconduct with respect to his sexual activity with three boys. That finding informs the penalty decision, rather than the lack of a criminal conviction.

f) Punishment Already Received

Dr. Sazant's counsel further contends that he has been practising under restrictions for the last 10 years, which has been stigmatizing and is itself a punishment. In 2005, a s. 37 Order was made to restrict Dr. Sazant's certificate of registration, prohibiting him from having any professional encounters with patients under the age of 16. Prior to 2005, he had signed undertakings that also restricted his ability to treat patients under the age of 16 years, except in the presence of an adult who would monitor the medical visits. Dr. Sazant's counsel notes that the reviewing court in *Mitchell* concluded that the panel, in determining penalty, ought to have considered the significance of the ongoing suspension that had been in effect for a period of five years at the time of the *Mitchell* hearing. In addition, it is submitted that Dr. Sazant has already suffered as a result of being criminally charged and as a result of the lengthy criminal proceedings, which lasted from 1998 to 2007. The extensive publicity of the criminal charges attracted significant stigma and caused Dr. Sazant great distress. He had paid significantly as a result of the embarrassment and humiliation caused by the media coverage.

Dr. Sazant's counsel also points out that the delay caused by the College's investigation (or lack thereof), as well as the length of the College proceedings, have also prejudiced Dr. Sazant and form part of the ongoing punishment he has had to endure. Dr. Sazant's motion with regard to delay has been previously dealt with by this Committee. The hearing into this matter began fourteen months after the end of last case in the criminal system, and there were extenuating circumstances with regard to the investigation which were dealt with in the Committee's decision on that motion, which will not be repeated here.

Dr. Sazant has not been suspended. In fact, he described his practice as "vibrant", although he has not been seeing children under age 16. The restriction of not being able to see children was initiated when the criminal proceedings commenced and was not put in effect by the College until some time later. The restrictions on his practice may have been punitive and stigmatizing, however, they were necessary under the circumstances.

There is no doubt that the publicity has been detrimental to Dr. Sazant, however, he has also augmented the media coverage by his own comments to reporters. Much of that publicity was because of the criminal proceeding against him.

g) Not the Worst Possible Offence and/or Not the Worst Possible Offender

Dr. Sazant's counsel points out that in the case of *College of Physicians and Surgeons of Ontario v. Boodoosingh* (1990), 73 O.R. (2d) 478 at p. 2 (Div. Ct.), the Court made it clear that "the penalty of revocation should be reserved for repeat offenders and the most serious cases." She also noted that Dr. Sazant's denial of the allegations should not result in a higher penalty. Dr. Sazant's response to the allegations did not factor into the Committee's deliberations in this matter. The Committee believes that this is a most serious case. When a man entrusted with the care of young boys violates that trust by engaging in sexual activity with those young boys, then he deserves the most serious of penalties.

h) Character Evidence

In looking at Dr. Sazant's behaviour in the intervening years, the Committee notes that there have not been any other complaints made to the College about his medical practice. Many patients and others have testified about the exemplary nature of his care and his skill. They also testified in regard to the doctor's outstanding reputation in the community for honesty, integrity and morality. Several letters attest to his good qualities and how he has helped people. Going above and beyond the call of duty in helping his patients was certainly a theme of many of the witnesses. However, the Committee notes that the letters do not refer to the fact that the allegations against the doctor have been proved regarding three of the four complaints, nor do they show knowledge of the findings of professional misconduct.

The Committee, however, found instructive a quote from *R. v. Profit* (1993), 15 O.R. (3d) 803, where Sopinka J. wrote:

The reasons of the trial judge must be viewed in light of the fact that as a matter of common sense, but not as a principle of law, a trial judge may take into account that in sexual assault cases involving children, sexual misconduct occurs in private and in most cases will not be reflected in the reputation in the community of the accused for morality. As a matter of weight, the trial judge is entitled to find that the propensity value of character evidence as to morality is diminished in such cases.

Dr. Sazant's sexual behaviour with the vulnerable children took place in the privacy of his own home. Notwithstanding the glowing reports of Dr. Sazant from his devoted patients and friends, the Committee did not lose sight of the fact that, behind closed doors, he was callously and calculatingly using the children for his own selfish ends to the lifelong detriment of at least two of the three victims. Dr. Sazant's character evidence must be given little weight in light of the circumstances.

i) Appropriateness of a Suspension

The Committee considered the arguments of Dr. Sazant's counsel that a three-month suspension is warranted and appropriate, as it is a serious penalty, and would provide the necessary denunciation and deterrence to the rest of the profession. The doctor is now 74 years old, and the suspension would have enormous financial consequences and would further stigmatize him. She presented several cases in support of her position from various health Colleges, as well as other professional regulatory tribunals, where a suspension was given for serious cases involving sexual abuse or sexual impropriety findings.

The penalties imposed by other professional regulatory bodies are not particularly applicable here, as most professions generally do not have the same level of intimacy with children as is required of medical doctors in the course of their work. The Committee considered the appropriateness of a suspension in light of these cases and

determined that the factors relevant to this case were sufficiently different to exclude the possibility that a suspension would be appropriate.

SUMMARY

In arriving at a decision with regard to penalty, the Committee considered the aggravating factors in this case:

- Dr. Sazant was in a position of trust as a physician to one boy, and an assistant coach to another.
- The abuse was repeated over many years.
- There were multiple victims.
- The sexual abuse was intrusive, including oral-genital contact in one case and rubbing of his penis on the leg of another boy to ejaculation.
- The abuse was degrading, with the boys bound to his bed and hit with a belt in one case.
- The abuse involved grooming and calculation.
- The victims were young, impressionable and vulnerable.
- Dr. Sazant deflected blame onto the boys for some of his actions.
- He maintained contact for years with the victim with whom he had the longest lasting misconduct, thereby revictimizing him.
- There is no indication that Dr. Sazant has any understanding of the risk he poses or the harm he has caused.
- There is no indication that he has sought rehabilitation or treatment for his sexually deviant tendencies involving young boys.
- It wasn't until the third victim reported Dr. Sazant to the police in 1991 that the doctor apparently stopped his behaviour. He did not cease his activity on his own. It required the intervention of police contact and subsequent undertakings with the Crown.

The relevant mitigating factors include:

- An otherwise unblemished record with the College.
- Reports of exemplary kindness to his patients.
- No evidence of further misconduct of a sexual nature since 1991.

In view of the myriad aggravating factors in Dr. Sazant's case, particularly the seriousness of his sexual misconduct and its repeated nature with multiple victims over a long period of time, the Committee considers revocation to be the most suitable penalty. In the view of the Committee, nothing less will serve sufficiently to denounce the physician's conduct and provide specific and general deterrence. Dr. Sazant's abhorrent actions devastated two lives and brought disrepute to the profession as a whole. When a doctor preys on young boys for his own sexual purposes, he degrades not only them but also the profession of which he is a member. The Committee is mindful that the College, in its self-regulatory role, must keep the protection of the public foremost in its mandate. Revocation will serve that purpose in the circumstances of this case.

COSTS

The College submits that this is an appropriate case in which to order Dr. Sazant to pay part of the College's costs and expenses under Section 53.1 of the Code:

- 53.1 In an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct or finds to be incompetent to pay all or part of the following costs and expenses:
- 1) The College's legal costs and expenses.
 - 2) The College's costs and expenses incurred in investigating the matter.
 - 3) The College's costs and expenses incurred in conducting the hearing.

The College asks for costs in the amount of the usual daily tariff of \$3,650 for each of the 36 days of the hearing, with the exception of three days during which evidence was led in relation to Patient C (on which no finding was made by the Committee). Therefore, the total amount sought is \$120,450.

Counsel for Dr. Sazant submits that no costs should be ordered, as the doctor was entitled to make full answer and defence with respect to the allegations made against him. The Committee considered her submissions as well as the issues outlined in *Filipchuk v. College of Licensed Practical Nurses of Manitoba*, [2004] M.J. No. 367 at p. 5. Dr. Sazant's counsel maintains that requiring Dr. Sazant to pay the costs requested by the College with respect to these proceedings would be an excessive hardship. However, the Committee was not presented with evidence regarding Dr. Sazant's financial situation and why this would be an undue hardship.

Is this an appropriate case to award costs?

The Committee found that Dr. Sazant has engaged in professional misconduct in three of the four matters. His actions violate the most basic principles of the profession and were calculating, serving his own selfish needs and very harmful to his victims. Dr. Sazant was not credible in his testimony before the Committee, and just as he presented a "nurturing" persona to his victims to entice them to him, he at times engaged in "impression management" rather than telling the truth, in an attempt to control the Committee's impression of him. His behaviour overall reflected his callous disregard for the wellbeing of the children as well as the integrity of the profession of medicine. These factors constitute reasons why an award of costs is entirely appropriate in this serious case of sexual misconduct.

The Committee understands that the payment of costs is not mandatory. In considering costs, several cases were referred to for guidance. In *Freeman v. Royal College of Dental Surgeons*, [2001] O.J. No 1726, the Committee awarded costs that were high, even when the member contended that at least one of the three allegations was "unwarranted".

However, the Committee noted that, although the evidence in one case did not lead to a finding, it was not unwarranted; the referral of that case was proper. The Superior Court upheld the high costs awarded in that matter.

The Committee is of the view that the College had reasonable grounds to proceed with the case based upon the complaint of Patient C. However, the allegations against Dr. Sazant were not proved to a level sufficient to make a finding of professional misconduct.

In the case of *Chuang v. Royal College of Dental Surgeons of Ontario*, [2006] O.J. No. 2300 (Div. Ct.), leave to appeal to S.C.C. refused, [2006] S.C.C.A. No. 482, the Court said :

The members of the Royal College of Dental Surgeons should not be liable for the costs of guilty members. However, members should not be liable for the whole costs of defending themselves, particularly when their right to practise is at stake.

In that case, costs awarded to the College were reduced by the courts from \$250,000 to \$200,000.

The Committee decided to reduce the costs requested by the College by one-quarter, to account for the lack of finding with regard to Patient C. Even though some of the cost of the proceedings resulted from numerous motions brought by Dr. Sazant, those motions had woven into them consideration of Patient C's complaint.

There were further costs in this case not mentioned by either counsel. Two police officers were present for all of the hearing days except the first one. The Committee believes that the College must bear the cost of this added expense as it is its responsibility to ensure the safety of the public, Committee, staff and counsel, as well as the member. No consideration was made for the costs incurred because of this added expense.

The Committee decided that costs for 35 days rather than 36 were appropriate in light of the half-day lost due to a member of the panel being unavailable, as well as another half-day for unexpected delays. Therefore, costs in the order of 35 days at \$3,650 per day are awarded. Dr. Sazant must pay the College the amount of \$95,812, which is 75% of the amount that would otherwise have been awarded. That amount shall be paid to the College within 90 days.

The Committee made its decision on costs without regard to the written submission filed long after the hearing was concluded.

PUBLICATION BAN

Dr. Sazant's counsel has asked for a publication ban until the case has been decided in the appellate courts. There is no statutory provision for this request, and it is denied.

ORDER

Therefore, the Committee ordered and directed that:

1. The Registrar revoke Dr. Sazant's certificate of registration effective immediately.
2. Dr. Sazant pay costs to the College in the amount of \$95,812, within 90 days of the date of this order.
3. The results of this proceeding be included in the register.