NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Stephen George Ross, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identities of the witnesses or any information that would disclose their identities under ss.47(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also made an order under ss.45(3) of the Code to prohibit the publication or broadcast of the name or any information that could identify Dr. Ross's eldest son or his eldest son's personal health information.

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

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

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and –

DR. STEPHEN GEORGE ROSS

PANEL MEMBERS:	DR. M. GABEL (CHAIR) B. MOSELEY-WILLIAMS DR. M. WOLFISH J. ASHMAN DR. C. J. CLAPPERTON
Hearing Dates:	**June 7-10, 2004**
Decision/ Release Date:	**October 18, 2004**

Publication Ban

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (CPSO) heard this matter at Toronto from June 7 to 10, 2004. At the conclusion of the hearing, the Committee reserved its decision.

PUBLICATION BAN

The Discipline Committee ordered that no person shall publish or broadcast the identities of the witnesses or any information that would disclose their identities under ss.47(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also made an order under ss.45(3) of the Code to prohibit the publication or broadcast of the name or any information that could identify Dr. Ross's eldest son or his eldest son's personal health information. The Committee delivered separate written reasons for this order on June 8, 2004.

ALLEGATIONS

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

1. under paragraph 51(1)(b.1) of the Code in that he engaged in the sexual abuse of patients;

2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* ("O/Reg. 856/93"), in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and

3. for the period before January 1, 1994, by his failure to maintain the standard of practice of the profession, as defined in paragraph 27.21 of Regulation 448 of the

Revised Regulations of Ontario 1980 and paragraph 29.22 of Regulation 548 of the Revised Regulations of Ontario 1990.

The Notice of Hearing also alleged that Dr. Ross is incompetent as defined by subsection 52 (1) of the Code, in that in his care of a patient he displayed a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature and to an extent that demonstrates that he is unfit to continue practise or that his practice should be restricted.

RESPONSE TO THE ALLEGATIONS

Dr. Ross denied the allegations set out in the Notice of Hearing

EVIDENCE

Overview of the Issues

The allegations of sexual abuse of patients in this case arise from the alleged conduct by Dr. Stephen Ross in relation to five patients (Patient A, Patient B, Patient C, Patient D, and Patient E) during the period from 1997 to 2002 at a Hospital in a town in Ontario and a Medical Centre.

The allegation of conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable and unprofessional are in relation to the complaints of six nurses and staff of the Hospital; Nurse Z, Ms. Y, Nurse X, Nurse W, Nurse V, and Nurse U, as well as the patient complainants noted above.

In addition, there is an allegation, relating to Nurse U, of failing to maintain the standard of practice before 1994.

Further, it was alleged Dr. Ross was incompetent in his care of patients in displaying a lack of knowledge, skill or judgment or disregard for the welfare of his patients of a

nature and to an extent that demonstrates he is unfit to continue practice or his practice should be restricted.

This case raises five primary issues as follows:

(i) Does the presence of an illness in Dr. Ross, in this case, a recent diagnosis of Tourette's Syndrome (TS) and Obsessive-Compulsive Disorder (OCD), affect the Committee's determination of the allegations?

(ii) Does the conduct of Dr. Stephen Ross constitute sexual abuse in regard to patients?

(iii) Would the conduct of Dr. Ross with patients and staff be reasonably regarded by members as either disgraceful, dishonourable or unprofessional?

(iv) Did Dr. Ross fail to maintain the standard of practice of the profession in the period before January 1, 1994?

(v) Was Dr. Ross incompetent in his care of patients?

Background

Dr. Ross has practiced family and emergency medicine at the Hospital, and a Medical Centre , for over a decade. Beginning in 2002, Dr. Ross's behavior became the subject of multiple complaints of inappropriate conduct with patients during examinations, and of inappropriate touching and verbalizations toward staff. As well, it was alleged that Dr. Ross touched himself in his genital area, while in the presence of staff and patients. There was an additional allegation that he slept in the nude in the on call room, and that he was not acceptably available when on back-up call. During the time following the allegations, Dr. Ross was diagnosed with Tourette's Syndrome (TS) and Obsessive-Compulsive Disorder (OCD), and began treatment for these conditions.

Counsel for the College and Dr. Ross informed the panel that criminal charges were laid against Dr. Ross, but these are not the subject of this hearing, and played no role in our deliberations and decision.

The College presented evidence from the above named patients and hospital staff concerning Dr. Ross's behaviour and actions, and support documents were introduced as exhibits concerning the hospital investigation and disciplinary process of matters included in the staff allegations. The defence called Dr. N as an expert witness as to Dr. Ross's diagnosis of TS and OCD. Dr. Ross testified in his own defence as to his behavior and actions. The Committee also heard contextual evidence from Dr. Ross's wife.

Summary of the Evidence

The evidence presented by each witness often covered more than one of the allegations. While testimony is segregated by the allegation, there will be overlap, and evidence that speaks to the other allegations and evidence that speaks to the other issues of concern, are included in each summary as required.

Evidence Relating to the Allegation of Sexual Abuse of Patients

#1 Testimony of Patient A

Patient A was brought to the Emergency Room (ER) of the hospital on March 30, 2002 complaining of chest pain and shortness of breath. She described her interaction with Dr. Ross as well as her observation of the interaction of Dr. Ross with Nurse Z. (See testimony of Nurse Z.) In his examination of Patient A, which occurred during and after the interaction with the nurse, Dr. Ross snapped the curtain shut, and pulled down the front of her hospital gown without looking at her. He continued to proceed with his examination while continuing to interact with the nurse in a way she found disturbing. She stated, "I could arrest and he would not know." During his examination, she testified he put his left hand under his pant's waistband and rubbed his genital area in an "up and down motion." He was extremely close to her and, in her opinion, seemed to act as if "he was not aware I was there." Her testimony confirmed that of Nurse Z in all essential features, adding that Dr. Ross said to her, "I'll re-charge your batteries" at least three times. Patient A stated that she had made a complaint to the Nursing Supervisor, was not allowed to sign it, and later received communication that the investigation of her complaint by the Hospital had been concluded. She wrote back asking how the

investigation could be concluded without talking to her, as she was the complainant. She received no further follow-up.

The panel found Patient A a credible witness in describing the events of her examination and in corroborating Nurse Z's testimony. While she was obviously outraged and angry at the treatment she received, and the behavior she observed of Dr. Ross with the nurse, the panel felt that the facts of her testimony were cogent, clear and truthful.

#2 Testimony of Patient B

Patient B testified that she saw Dr. Ross on July 9, 2002. This was her first appointment with him, although she had previously taken her children to see him. She suffers from a seizure disorder and, during an episode the day prior, she had fallen and hit her head on floor. As part of the examination, he pulled up her shirt and, while using the stethoscope, she testified that his middle finger touched her breast. She had not seen a physician holding a stethoscope in his palm in that manner before. She was not offered or given a gown. She felt he stood too close to her, being between her legs during parts of the examination, and his leg touched hers. He reassured her following the examination and she was given a "head injury routine" printout by the office nurse. She read about his arrest the next day in the newspaper, and this prompted her to make her complaint to the CPSO. She did not recall him receiving a phone call during the examination or leaving the room to deal with it.

The Committee found that this witness told of the events as she perceived them and accepted her description of the lack of gown and the method used to examine her chest.

#3 Testimony of Patient C

Patient C testified that she saw Dr. Ross in the fall of 2000 since she was concerned about the possibility of a sexually transmitted disease (STD). She had a pelvic examination, and was provided with a gown. The room was small and she stated that, on two occasions when he moved around her to a side table, he brushed against her foot. She stated that his penis touched her foot on the first pass, which she thought accidental but,

on the second pass, she was not sure if perhaps it was not accidental. She testified that the touching could have been accidental. The issue of whether this was his leg or penis within the confines of the cramped room was not apparent. She was also uncomfortable with some of the questions he asked while taking a sexual history, which included questions concerning frequency of intercourse with her husband, and if intercourse "hurt." She stated the CPSO and the police contacted her concerning her treatment. She stated that she did not have a clear recollection of her visits with Dr. Ross, and in that respect the Committee found her evidence was not helpful, although she was sincere and wanted to be helpful.

#4 Testimony of Patient D

Patient D saw Dr. Ross multiple times in 2000. The pertinent parts of her testimony for the Committee were that:

(i) Dr. Ross diagnosed and referred her for treatment of a rare brain stem compression syndrome based on his examination and follow up of her presenting symptoms. She testified that she perceived this series of office visits, which led to referral to a neurosurgeon and corrective surgery, as missing her diagnosis and not prescribing the correct treatment.

(ii) On one occasion, while caring for a breast abscess, after unzipping her shirt to do an examination, he tugged at her bra and made a comment of "Not needing both of them" while doing the examination. While she agreed he might well be trying to make a joke or "lighten things up", she found the comment shocking.

(iii) On a third occasion, when she had a leg rash, she asked him to leave the room or for a nurse to be present and he stated, "Oh come on", and did not leave. She also described him on this latter occasion as "weird, aggressive and rough. A different person." The witness told of a history of sexual abuse and mistrust of male physicians.

The Committee accepted as fact that the comment as to the need for two breasts had been made, that Dr. Ross adjusted her clothing and that he did not leave the room when asked, all of which were improper. However, the Committee was of the opinion, based on the chart and Dr. Ross's testimony, that the clinical examination, diagnosis and treatment described were proper.

#5 Testimony of Patient E

Patient E was a long-term patient of Dr. Ross. She was seen on July 8, 2002 at the Medical Centre. Prior to this visit she had been satisfied with her care by Dr. Ross. She testified that, on that day (the day that Dr. Ross was charged criminally and the event noted in the newspapers), Dr. Ross acted bizarrely and was not the Dr. Ross she knew. He did not leave the room while she undressed and prepared for her examination; he told her she was taking too long to get ready; and, he pushed her down on the table and "grabbed" at her bra. She found the breast examination to be different than her expectations. He had pushed her down on the examination table and used two hands for the examination. She perceived it as a "quick feel". She later told a nurse at the Centre of her discomfort with the examination, and she was asked to tell this to Dr. M, the physician she had an appointment with. (After her visit with Dr. Ross on July 8, 2002, Dr. Ross was no longer seeing female patients.) She believes Dr. M made the report to the CPSO concerning the incident. On cross-examination, Patient E recounted a history of addiction to Tylenol #3, but denied addiction to other narcotics.

While the witness found it difficult to stay on topic and her testimony was coloured by opinion and retrospective analysis concerning the events of July 8, 2002, the Committee accepted as factual this witness's description of the manner of the examination (not leaving the room, pushing her down, grabbing at her bra) and deemed them inappropriate. The Committee did not accept her opinion that the method of doing the breast examination was inappropriate.

Evidence relating to the Allegations of Disgraceful, Dishonourable or Unprofessional Behaviour, Failing to Maintain the Standard of Practice and Incompetence

The following witnesses testified in relation to all or some of the above allegations.

Testimony of Nurse Z

Nurse Z is a registered nurse and, at the time of reporting her allegations, she was working in the ER at the Hospital. On March 30, 2002, she was working in the ER and went to check the batteries of a patient's monitor (Patient A). While she was in the room, Dr. Ross entered and pressed up against her while she was bending over to adjust the battery case of the equipment. Dr. Ross began touching her shoulders, arms, side of breast, back and buttocks. While the size of the work area was small, she believed that the touching was deliberate. When she started to leave, Dr. Ross grabbed her jacket, but did let go and she left the room. She testified that a patient had witnessed the incident and became very upset (see testimony of Patient A above). She advised the patient to talk with the supervisor. On the same day, with a different patient, she was standing behind a nursing student who was attempting to start an intravenous (IV). Dr. Ross came around and touched her buttocks. She felt "I was being molested." She thought of it as deliberate. She decided to make a complaint at this time to her supervisor and took the complaint form home to fill in as she was not sure she wanted to go forward because of what she perceived could be negative consequences subsequent to making such a complaint. Following the incident and her official complaint, Dr. Ross approached her and attempted to apologize. After the hospital decision concerning the complaint, part of which ordered that there be no contact by Dr. Ross with Nurse Z, he approached her again, and initiated contact. When he contacted her, he was upset and crying, and asked her to withdraw the complaint. She refused. She testified that there had been a pattern of behaviour between them, including conversations about personal and family matters, massaging of her neck, touching, poking and teasing her, but she felt something had changed with this incident in front of the patients. Prior to this incident, she described that, when he tried to kiss her, she told him he was making her feel uncomfortable and he

had told her he enjoyed making her feel uncomfortable. She stated that in the past he would sometimes rub up against her and make inappropriate comments in front of patients, which she felt was demeaning. She did not report the other incidents, but felt it was common knowledge in the hospital that Dr. Ross acted this way. She stated he was known around the hospital as "International hands - Russian fingers, Roman hands."

Nurse Z's explanation concerning reporting the incidents noted above was that, in the past, she felt that there would be no positive outcome to a complaint, and just wanted to avoid incidents. There was a past level of touch and intimacy of conversation between them, including discussion of her marital situation. During the years, Nurse Z agreed that there had been changes in Dr. Ross's behaviour. With the encouragement of others, and the accumulated change in Dr. Ross's behaviour, she decided to make the present complaint.

Nurse Z said that Dr. Ross was sometimes abrupt with patients, but she gave no instances of behaviour with patients that were beyond her professional expectations, nor any testimony concerning any perceived incompetent behaviour.

The Committee found Nurse Z to be credible in her description of the seminal event in the patient's room. We were not assured that a form of collegial relationship did not exist prior to this, with fluid boundaries. While the witness stated that she had not reported events due to her fear of repercussions, it appeared to the Committee that they had a relationship, which included discussion of personal matters, teasing and flirting behavior, which was ongoing until the last event. Dr. Ross in his testimony did not deny the alleged behaviour in the patient's room, describing it as "silly and inappropriate, but meaning no harm." He denied that the behavior was sexual in nature.

Testimony of Ms. Y

For 20 years, Ms. Y has worked as an x-ray technician at the Hospital. She now works day shift but, in the past and during the 1990's, she worked night shifts as well. Physicians, including Dr. Ross, would attend in the x-ray viewing rooms to look at films, and he often asked her advice as well. On repeated occasions, Dr. Ross would approach her from behind, place his hands on her shoulders and then bring hands down her side and touch her buttocks. She initially thought it was accidental and then suspected it was not. She began to raise her arms to deflect his hands, but instead he would poke her in the ribs. On one occasion, she remembered him approaching from behind and speaking into her hair, his nose touching the back of her head. She did not report the incidents, as she felt more comfortable "hiding" from him. She explained that it was part of her character to "avoid" conflict. She began to hide when she heard the distinctive sound of his shoes. An additional and different incident occurred when Dr. Ross and Ms. Y were walking down a corridor together conversing. Ms. Y testified that, with a patient sitting near by, Dr. Ross said, "What about screwing, do you like screwing?" She does not remember her response. She described being shocked, and agreed that the statement seemed to "come out of nowhere." She changed her shift in 2000, and no further incidents have occurred. She described Dr. Ross as "touchy-feely", denied he would grope her, said that the door to her room where the incidents occurred was always open and further said that at no time, other than noted above, was anything sexual said by him.

In his testimony, Dr. Ross admitted the touching described by Ms. Y, agreed that coming close would "scare her", and described his behavior as immature and inappropriate. He denied touching Ms. Y's buttocks, but agreed that he had poked and tickled her and ran his hands down the side of her leg. Dr. Ross denied making the "screwing statement", and had no alternative suggestion as to what he might actually have said.

The Committee found Ms. Y to be credible.

Testimony of Nurse X

Nurse X is a registered nurse at the Hospital who frequently worked with Dr. Ross. She stated that, in 2002, while four to five months pregnant and seated at a ward nursing station, Dr. Ross moved his chair behind her, felt her abdomen and "grabbed" at her breast. She told him at that time, "That is a good way to lose an arm." She states that she reported this event, but nothing ever happened. She also described Dr. Ross's habit of placing his hands down the front of his pants. She testified that this occurred in front of patients as well as staff.

On March 30, 2002, while Nurse X was working on the Medical-Surgical Ward, Dr. Ross called in and demanded that each nurse on the floor call him with a report on the patients they were caring for, rather than take a full report from her on all the patients. She testified that, on another occasion, she called Dr. Ross multiple times requesting increased pain medication for a palliative care patient and he refused. She stated that when she told Dr. Ross that a family member was upset he said, "Tell them he's a jerk off." The patient or family did not hear this exchange.

The Committee found this witness to be credible and accepted the described facts. However, the Committee took note of disparity in the evidence of Nurse X and Dr. Ross as to the timelines of the alleged breast touching, which, based on the evidence led by both counsel, the Committee was unable to resolve.

Testimony of Nurse W

Nurse W is a RN who worked as casual staff at the Hospital. She recounted multiple episodes of clinical disagreements with Dr. Ross as to the treatments to be administered to patients. She described an incident in the ER, when she, at Dr. Ross's request, closed the door of a room where Dr. Ross was suturing a self-inflicted wound in a psychiatric patient. Dr. Ross then asked the patient to cry out, "Stop, stop you are killing me" in order to gain her attention. Nurse W stated that Dr. Ross insisted she close the door. Dr. Ross denied this, testifying that the door was always left open. Dr. Ross conceded that he had asked the patient to shout out and testified that it had

worked to gain Nurse W's attention in order to get more suture material. Nurse W and Dr. Ross filed cross complaints with the Hospital, which resulted in shift changes to avoid further contact. While Nurse W was not comfortable working with Dr. Ross, she took exception that her shifts were changed to reduce their contact.

Nurse W recounted an incident where she went to the on call room to get a signature on an order from Dr. Ross. She stated that, when she opened the door, Dr. Ross was sleeping in the nude, but she agreed that he was covered by a sheet. She stated that she thought this was inappropriate.

The Committee took note that the interaction in the suture room caused a patient to be involved in a continuing interpersonal conflict between Dr. Ross and Nurse W. The Committee found the complaint concerning sleeping attire in the on call room to be frivolous and was more relevant to the attitude of Nurse W towards Dr. Ross than an allegation of sexual abuse. Nurse W presented with an obvious sense of competition and active dislike for Dr. Ross, but with an insistence that all of her concerns had nothing to do with that and were purely part of her role as a nurse wanting the best care for her patients. The Committee discounted Nurse W's testimony, except as to the uncontested fact concerning Dr. Ross inciting a patient to call out "Stop, stop you are killing me", as it appeared to be motivated by and reflect an interpersonal conflict.

Testimony of Nurse V

Nurse V is a registered nurse at the Hospital. She testified that Dr. Ross placed his hands down the front of his pants on multiple occasions, adjusting his genitalia, often in front of patients and often came too close to her. She testified that, specifically, on September 22, 2001, Dr. Ross poked her around the waist. On that same evening, when called to pronounce a patient dead, he joked, "Are you sure he's really dead this time?" (This related to another time when the same patient had been thought to have expired, but had not.) Nurse V stated that there were similar, but not as extensive, incidents of poking at her in the past. As well she recounted an episode that, while in a store buying winter cloths and equipment, she had run into Dr. Ross and he later, at

work, alluding to that meeting, said to her, “bet you look sexy in red.” She also described multiple incidents where he “invaded my space” and she felt “intimidated - too close for comfort.” She testified that she discussed Dr. Ross’s behaviour with her colleagues, and that his behavior was a well-known fact. She noted that she had worked with Dr. Ross for seventeen years as colleagues.

We found Nurse V to be direct and credible in her description of events but felt that her reaction to the comments made exceeded the level of the stimulus.

Testimony of Nurse U

Nurse U is a registered nurse at the Hospital. As a floor nurse and supervisor, she worked with Dr. Ross for seventeen years. She recounted an incident in 1987, when 6 months pregnant, Dr. Ross “grabbed my belly” and rubbed, reaching “too low, close to my pubic bone”. She reacted by telling Dr. Ross to “keep his hands to himself.” He replied, “he just liked rubbing pregnant bellies.” She made an oral report to the Hospital at that time. She continued to work with Dr. Ross, albeit reluctantly, for three years thereafter. Nurse U left the hospital and returned in March 1995. Nurse U resumed working with Dr. Ross on her return to the hospital.

Nurse U described incidents in which Dr. Ross was not available as the alternate on call physician in 2001 and 2002 as a result of being more than fifteen minutes away from the hospital and not within the geographical area of the hospital. Various staff documented these incidents. She recounted no negative patient outcomes from these events. While these incidents dealt with guidelines, they were not issues defined in the hospital regulations. Nurse U stated that she had written up other doctors for the same transgressions of guidelines, but did not know if any other doctor had more than five letters concerning this. It was Nurse U’s belief that patients were put at risk as a result of Dr. Ross’s conduct, but she knew of no specific untoward results.

The Committee found Nurse U to be an open and forthcoming witness. While there was a note of interpersonal conflict and dislike in her testimony, the Committee found

that Nurse U recounted events as she had perceived them and the Committee accepted her testimony.

Expert Evidence on the Illness of Dr. Ross
Dr. N

The defence called Dr. N to give expert evidence regarding a neuropsychiatric disorder with which Dr. Ross is afflicted which it was submitted was relevant in considering the allegations against Dr. Ross.

Dr. N is an Associate Professor of Psychiatry at a Toronto University, and has been the Director of the Tourette Syndrome Clinic in a Toronto Hospital, since 1984. He is actively involved in research concerning this syndrome and has authored more than fifty publications, and has an active clinical practice. The Committee accepted Dr. N as an expert witness in this field.

Dr. N met with and assessed Dr. Ross using his standardized protocol on July 14 and 30, and October 2, 2003. He also interviewed Mrs. Ross and one of their sons. Dr. Ross completed a series of structured questionnaires that Dr. N employs to assist in reaching a diagnosis, including assessment of Obsessive Compulsive Disorder (OCD) and Attention Deficit Disorder (ADD) as well as Tourette's Syndrome (TS).
Dr. N described TS as an inherited, familial disorder with a great range of symptoms. It was considered rare in the past, but data now shows that TS affects one to three percent of the population in North America and the United Kingdom to various degrees. Dr. N testified that involuntary jerks and tics, involuntary vocal "echo" phenomenon, sniffing, throat clearing, and repetitive actions can be caused by TS. Stress tends to increase the frequency and strength of tics and other involuntary actions. As an example of TS in the present medical community, Dr. N cited a surgeon in British Columbia who had been diagnosed with TS at age 35 and who functions well within a milieu that is aware of his symptoms and signs. Dr. N noted that TS patients often have OCD as part of their presenting picture and as a major feature of their illness.

Dr. N reviewed the reports and complaints made to the College, as well as conducting his own assessment of Dr. Ross's condition. During his testimony, Dr. N quoted from his reports which were entered as exhibit. A salient paragraph from Dr. N's report of October 31, 2003 is:

> "Dr. Ross recalls frequent blinking and squinting as well as opening his eyes wide as early as age eight or nine. Popping knuckles, poking objects and people with his fingers and suddenly extending his arms may have even been present even earlier, perhaps even at age six. Other involuntary movements included a stereotypic repetitive tucking of his shirts in, adjusting his waistband and pants with his hands in his waistband, or in his pant pocket, pulling at his shirtfront, repeatedly, and neck stretching. There was also twitching of the nose and chewing on the lip and rubbing his nose very frequently. Phonic tics included sniffling every few seconds present for at least 11 years, i.e., since his wife has known him. There is also history of frequent throat clearing. The sniffling can be rather annoying to his wife because it is persistent in nature while Dr. Ross is often unaware of his sniffling. The above-mentioned symptoms have varied in their severity and frequency over time. His tics tend to increase when he is under stress."

Dr. N's opinion was that Dr. Ross meets the criteria for TS.

Concerning OCD, Dr. N presented an extensive list of Dr. Ross's behaviour, summarized as follows:

> "This gentleman has had intrusive, distressing and unwanted thoughts and rituals which began in his teens which have varied in severity and take up between one and several hours per day. These symptoms have been at times disturbing to him even though he tends to resist and has much control over these symptoms. It is my opinion that Dr. Ross meets the diagnostic criteria for Obsessive Compulsive Disorder."

Dr. N stated that nearly half of patients with TS also meet the diagnostic criteria for OCD, as is the case with Dr. Ross. Both of these conditions are believed to be inherited and to develop in childhood or adolescence.

Further testimony that aided the panel included descriptions of behaviour that are specifically relevant to allegations made against Dr. Ross in this proceeding. Dr. N stated that twenty percent of patients with TS have difficulty in reading social signals. To Dr. Ross, symmetry is very important. He wears open sandals to avoid shoelaces not being correctly in line. He cannot tune out irritants, i.e., he tugs on clothing, turtle neck sweaters, shirt and tie. He wears a shirt and tie at work, but has to strip to the waist at home. Dr. N testified that Dr. Ross had told him of recollection of unwanted thoughts that he might harm himself as early as age fifteen. The thoughts were distressing and caused anxiety for Dr. Ross. These symptoms are still present for Dr. Ross at times. Dr. Ross also has numerous preoccupations and rituals with his personal hygiene. He feels the effects of even the smallest amount of chemicals for many hours. He checks doors and his pets constantly. He worries about appearing ugly and about exuding body odor. He has a compulsion to count floor tiles if he is not busy and has a compulsion to have things around him in geometric patterns. He is fearful of performing unwanted acts or shouting obscenities. He is also fearful of losing important objects, such as scraps of paper. There are repetitive tunes that at times come into his mind and persist. Dr. Ross has also had a longstanding urge to touch other people or to brush up against someone in a crowded situation. He is aware that such behaviour is inappropriate and endeavours not to act on these impulses. Touching others in this manner has no sexual meaning to him. Patients with TS commonly touch their own body as well and, in particular, they often need to touch their genital area or adjust their underwear to alleviate unpleasant sensations in that body region. Dr. N believes that, to the extent that any inappropriate touching of self or others by Dr. Ross did occur, it can be viewed as a momentary failure to control these involuntary, unwanted urges. Dr. N testified that a TS patient needs to have completeness, and when they know they are doing something such as touching that may not be appropriate, the urge to do so overrides other concerns.

In reviewing the complaints against Dr. Ross, Dr. N was of the opinion that Dr. Ross was trying to mask compulsive contact with other people, in those instances where he was unable to control his impulses, as casual or accidental. In both TS and OCD

there are observable symptoms that potentially can attract unwanted attention. Dr. N was of the opinion that Dr. Ross has been hiding his symptoms from “friends or enemies” since childhood, leading an almost “guerilla” life. This has led to impaired self-image and self-esteem, as well as reduced self-confidence. Dr. Ross would try to hide behind brash and, at times, gruff behaviour, especially if he perceived that his competence was being questioned or if he feared that his symptoms would be discovered. With respect to sleeping in the nude, Dr. N testified and opined that this would be a common response to a hot atmosphere and itching skin from clothing contact.

Dr. N was of the opinion that Dr. Ross was unaware that he had any neurological or psychiatric condition until after criminal charges had been laid. He was unaware that his unusual behaviour or preoccupations were the common knowledge of fellow workers which evidences his lack of ability to read social signals.

Dr. N made further comments concerning his views as to the appropriate treatment for and possible restrictions to be placed on Dr. Ross’s certificate of registration. The Committee was of the view that these comments were not useful at this stage of the hearing and should only be considered after findings, if any, are made by the Committee.

Dr. N agreed with College counsel that while TS explains some of Dr. Ross’s actions, it does not turn inappropriate conduct into appropriate conduct. He further agreed that assisting patients to undress is not a TS symptom. He stated that the Tourettic person does feel some discomfort or abhorrence for their behaviour, is generally aware, but has an urge and cannot always help him or herself. As such, a person with TS may try to apologize or make their actions appear to be a joke. Dr. N felt that Dr. Ross was not in denial, but certainly did minimize the effect of his actions on others and himself.

The Committee found Dr. N's testimony to be informative and helpful in providing context to Dr. Ross' alleged behaviour and in placing Dr. Ross in the continuum of the diagnosed disorders. The Committee accepted Dr. N's diagnosis, and heard no testimony that would bring it into question.

The Testimony of Dr. Ross

Dr. Ross is a 51-year-old physician in private general medicine practice. He graduated from Queen's University with a degree in medicine. His training includes a psychiatric residency in Toronto, a house officer position in New Zealand, and a family practice residency in Toronto. He obtained his CCFP in 1983. Dr. Ross has also earned an MA in education.

In the spring of 1986 Dr. Ross started practice at the Medical Centre and continues to practice there to the present. He has privileges at the Hospital where he does ER shifts. As well, Dr. Ross worked shifts in the ER at two Toronto area hospitals. Prior to the present allegations being raised, Dr. Ross worked an average 80 hours a week. Dr. Ross has been married for ten years and has four children.

Dr. Ross was quiet and composed during his testimony. He appeared to be considering each question and attempting to explain his behaviour at the time of its occurrence and as he now sees it from the present perspective.

Dr. Ross testified that when the complaints first became public, he was very shocked and frightened, not believing that his actions were sexually abusive or that he was not liked by the nurses at the hospital. The general theme he presented, as the specific allegations were reviewed, was to describe his actions as silly and as meant in a playful manner. Dr. Ross is now aware that his actions were not so perceived. He testified that he is aware that he has hurt some of the nurses who gave evidence in this proceeding, that he feels genuine affection toward them, and that he is upset to have put them through this. Dr. Ross was apologetic towards them. In general, Dr. Ross accepted that in many cases his behavior was unprofessional and intrusive.

Dr. Ross testified that at first he felt resistant to the diagnosis of TS made by Dr. N. However, as he has come to accept the diagnosis, he feels some relief in understanding himself. The diagnosis has motivated changes in behaviour. Dr. Ross testified that, since the complaints were made against him and his diagnosis, there have been no incidents that have resulted in further complaints. Dr. Ross continues to operate a restricted practice imposed by the Court and the College.

He testified about each of the complainants, as follows:

The Patients

Patient A

Dr. Ross generally accepted that Patient A's and Nurse Z's recollection of events are true. Dr. Ross testified that, at the time, he thought Patient A could not see "the horseplay." He stated that he lowered rather than pulled down Patient A's gown, and did not ask permission before doing so. Dr. Ross did not deny the observed behaviour of his hands in his pants. At the time, Dr. Ross had no awareness of the effect of his genital adjustment on observers.

Patient B

Dr. Ross had a clear memory of this encounter as he was interrupted during the examination by a phone call informing him that the criminal charges that had been laid against him that morning prior to beginning his office day had now become public. Dr. Ross admitted that he stood too close to Patient B, and that his fingers touched the outside of her bra due to the way he held the bell of his stethoscope. Dr. Ross did not recall whether he pulled Patient B's shirt up without permission.

Patient C

Dr. Ross testified that his examination of this patient was in a small room and, while he may well have brushed against her foot in the stirrup in passing by, it would have been with his upper body. He also denied that he examined Patient C without a nurse

present. Dr. Ross testified that his sexual history taking covered the usual areas for someone presenting with a complaint of a possible STD.

Patient D

In his testimony, Dr. Ross described the course of events that led from obscure symptoms to a diagnosis of Arnold-Chiari Syndrome and a referral for care for Patient D. He agreed that he had made a comment concerning the number of breasts needed and stated that he was trying to be "light hearted" and to make a joke that he thought would dispel anxiety. Dr. Ross did not contradict Patient D's testimony that he unzipped her shirt to perform an examination.

Patient E

Dr. Ross testified that he did stay in the room while Patient E disrobed for a breast examination. He stated that it was possible, "maybe yes", that he helped Patient E take off her bra. Dr. Ross described using the flat of his hand to do the breast examination and agreed that he may well have used two hands to manipulate the breast during the examination. Dr. Ross also testified that visits with Patient E were characterized by unfulfilled drug seeking behaviour.

Nurses and Staff

Nurse Z

Dr. Ross testified that he agreed that Nurse Z's written complaint was fair in its description of the event. Dr. Ross felt that the subsequent hospital inquiry and decision had brought the matter to a close, as he had sent a written apology, and agreed to take a boundary course as well as attend with a therapist, which the Committee was advised he did. Dr. Ross testified that he had not realized how upset Nurse Z was, and had considered her a friend in the past. "It grieves me to feel she was upset." Dr. Ross testified that in the past there had been multiple interactions with Nurse Z on a staff and personal basis, and that he would offer and she would, in his estimation, accept massages. He agreed that on one occasion he put his hand over Nurse Z's shoulder while giving her a neck massage and he did touch the top of her

breast. Nurse Z took his hand away and he did not repeat this action. Dr. Ross disagreed with Nurse Z's evidence that she had asked him to stop the massages. He considered much of their interaction to be "harmless flirtation". Dr. Ross testified that Nurse Z knew he was happily married and talked to him about her marriages and their problems. Dr. Ross gave advice and empathy.

The incident in the examination room in the presence of Patient A was admitted. Although aware of the order to not have any contact with Nurse Z, Dr. Ross testified that he did attempt to discuss the incident with Nurse Z, contravening the terms of the hospital agreement.

Concerning Nurse Z's statement that his behaviour was generally known around the hospital, Dr. Ross testified that he felt friendly with the nurses. Dr. Ross had not been aware he was characterized by some at the hospital as having "international hands".

Ms. Y

Dr. Ross admitted that he approached Ms. Y and stood too close, touching her hair and, at times, running his hands down her sides and poking her when she began to raise her hands to avoid the stroking. Dr. Ross testified that he touched Ms. Y's sides but not her buttocks. He considered his behaviour to be flirtatious and silly, and now sees it as immature and inappropriate. Dr. Ross denied that he made any statement concerning "screwing", and cannot figure out what he might have said that would be interpreted as such. Dr. Ross testified that he ceased any touching with her about five years ago.

Nurse X

Dr. Ross agreed that he had rubbed Nurse X's pregnant abdomen but denied that, during the same incident, he touched her breast. He stated that at another time he tripped and, in righting himself, had inadvertently touched Nurse X's breast. Dr. Ross admitted that Nurse X had told him, "that is a good way to lose an arm". Dr. Ross confirmed he had touched Nurse X's pregnant abdomen without permission. He

believes that his interactions with patients that the two of them cared for were appropriate and any remarks he made concerning a patient's family were private and between themselves and were not heard by the patient or family. He stated he was "short" with her during a time she wished further medication for a patient. He agrees that he asked each nurse on the floor to report separately and testified that this was not against any hospital policy.

Nurse W

Dr. Ross testified that Nurse W was not his "favorite person" and conflict between them was common. He was relieved when she left the hospital. Dr. Ross testified that Nurse W made him feel insecure. Of the incidents she described, Dr. Ross admitted that he asked a patient to shout out "you are killing me" in order to get her attention. Dr. Ross disagrees with Nurse W's evidence that he asked her to close the door prior to this incident; it was always open and she closed it this time. When asked if this action was inappropriate, Dr. Ross responded, "It did get her attention". With respect to the other allegation as to patient care, Dr. Ross said she was repeatedly questioning his judgment, and denied incidents of rudeness or bumping or hitting her. He said that his treatments of patients were appropriate.

Nurse V

Dr. Ross admitted that he had seen Nurse V at a ski swap and later commented about her appearance. He did not see this comment to be negative or a problem. Dr. Ross admits that he wheeled his chair close to Nurse V on the ward, and he now understands that this was inappropriate.

Nurse U

Dr. Ross admitted to rubbing Nurse U's pregnant belly without permission, a behaviour he thought of as unthreatening. However, he testified that his hand was nowhere near her groin. He was taken aback at Nurse U's animosity, was upset, and was afraid of her thereafter. Dr. Ross disputed the incidents concerning his on call availability and said that these were scheduling mistakes for which he was not

responsible. While he was not in the geographic area of the hospital at all times, Dr. Ross stated that this was no different from other hospital physicians when on back up call. Dr. Ross is aware that working at Toronto area ER's and then being on backup call at shift change was not following policy, although this is not a policy which is written in any hospital regulation. Dr. Ross had discussions with the hospital administration on the issue of being more than fifteen minutes away but no action was taken by the hospital.

The Committee found Dr. Ross to be sincere, truthful and direct in his testimony. At no time did he use the TS as a justification for his admitted behaviour. Dr. Ross's counsel submitted that, although not a defence, it was an explanation for his behaviour.

The Testimony of Mrs. Ross

Mrs. Ross is Dr. Ross's wife. They have been married for ten years, and have four children, ages three, six, seven and nine. Mrs. Ross is an elementary school teacher. The Ross's had met in 1992 at an informal political group meeting. Mrs. Ross's first impression was that he was a thinker, "a professor type," and she, thereafter, deemed his behavior to be "eccentric." Mrs. Ross testified that Dr. Ross touched himself a lot and had multiple peculiar mannerisms. Her friends described him as either "wonderful" or "odd". She described him as an "odd duck."

Mrs. Ross testified that she was stupefied when the sexual charges were made. The only one she could relate to was "masturbation" because she knew that when Dr. Ross was nervous, his hands would be all over his body and in his pockets and pants. Following the laying of the charges, Mrs. Ross attended a continuing educational seminar, which described the symptoms and signs of TS. Mrs. Ross believed Dr. Ross might well have TS. Mrs. Ross subsequently brought the issue of TS up with Dr. Ross' lawyers and they arranged a consultation with Dr. N. Initially Dr. Ross could identify the symptoms of TS as being present in one of their sons, but did not see them applying to him.

Mrs. Ross gave evidence as to the changes that have occurred in Dr. Ross since the diagnosis and also gave evidence as to the cognitive behavioral treatment that has begun.

The Committee is of the opinion that Mrs. Ross's testimony as to Dr. Ross's present state may be helpful in the second phase of this hearing but is not relevant to a determination of the allegations. However, the Committee notes that Mrs. Ross did provide the Committee with useful context for Dr. Ross's personality and the behaviour and actions noted in the testimony of the complainants, which is relevant to some of the allegations.

ANALYSIS OF THE EVIDENCE AND THE FINDINGS OF THE COMMITTEE

(i) Did Dr. Ross' illness have a bearing on the Committee's adjudication of the allegations?

The Committee accepts that Dr. N's diagnosis is accurate. There was no testimony to refute Dr. N's testimony and the Committee found it cogent and clear in terms of explaining the possible influence of Dr. Ross's illnesses on his behavior. The Committee also found the testimony regarding the long-standing pre-diagnostic behaviour of Dr. Ross at home and at the hospital that was ascribed to eccentricity or ignored to be believable.

Accordingly, TS may explain some of Dr. Ross's behaviour, e.g. involuntary actions such as genital adjustment, poking, standing too close or touching, as described in the testimony of Dr. N.

The Committee accepts that "sexual intent" is not a necessary component of sexual abuse. Touching or conduct "of a sexual nature" need not be for sexual gratification. The Committee understands that touching of a sexual nature may not necessarily be

touching with a sexual intent. Someone who touches a patient inappropriately for reasons of abuse of power or desire to control, even if without sexual intent, can still be found to have committed an act of sexual abuse. But the touching or conduct must be voluntary, if there is to be a finding of professional misconduct. An accidental fall against a patient, or an involuntary action caused by a disease, does not constitute professional misconduct. In that respect some, but only some, of Dr. Ross's actions can be understood in the context of the disease of TS. There are many other actions of Dr. Ross in which TS plays no role.

Accordingly, the Committee examined very carefully the evidence of inappropriate behaviour by Dr. Ross, and has concluded that some of what he did and said cannot be explained or justified by TS. Furthermore, to the extent that Dr. Ross acted with knowledge of what he was doing and without regard for its effect on patients or colleagues, that itself may constitute professional misconduct.

In his testimony, Dr. Ross made reference to his belief that his behaviour was teasing, silly (in a self understood positive sense) and accepted by staff. However, we do not believe that Dr. Ross's medical conditions stopped his ability to be self reflective about his own behavior. While his actions may evidence a degree of intrusive thoughts and hard to control actions, in our view, they were interpreted by him with a self-serving rationalization that absolved him from being able to see the effect of his behaviour. The evidence indicates that, with or without a diagnosis, Dr. Ross was aware of what he was doing and took no useful steps to change his behaviour prior to the charges being laid.

(ii) Did the conduct of Dr. Stephen Ross constitute sexual abuse of patients?

The Committee heard no testimony from the nurses or patients that presented clear and cogent evidence that Dr. Ross subjected patients to sexual abuse. The proven incidents of self-adjustment of his genitals, standing too close, poking and touching of patients, and the rough movement of patients' clothes during examination were

inappropriate, but we are not convinced, on the balance of probabilities, that such conduct was touching or conduct of a sexual nature which would constitute sexual abuse. The Committee is of the opinion that this conduct was involuntary because of TS, or was not in and of itself of a "sexual nature". The Committee is aware that a patient may perceive thoughtless behaviour as sexual abuse. We are cognizant that this behaviour was interpreted as sexual by some of its observers.

Therefore, we find that the allegation under paragraph ss.51(1)(b.1) of the Code, that Dr. Ross engaged in the sexual abuse of patients, was not proven.

(iii) Would the conduct of Dr. Ross with respect to patients and staff be reasonably regarded by members as disgraceful, dishonourable or unprofessional?

While there were components of the testimony of the complainants that Dr. Ross denied or questioned, in the main, he admitted the vast majority of the factual allegations.

The Committee would divide the behavior at issue into the following categories: (1) that which occurred with patients, (2) that which occurred with staff in the presence of patients, and, (3) that which occurred between Dr. Ross and staff.

That Dr. Ross was rude or abrupt with patients, acted inappropriately and made inappropriate remarks to staff in front of patients (Patient A), did not provide gowns on all occasions, remained in the room while patients disrobed (disregarding a patient's express request (Patient D), and assisted in removing items of clothing, are actions that the Committee cannot countenance. Respect for patients is primary and well understood within the profession. We find that the proven instances of this behaviour by Dr. Ross were disgraceful and unprofessional and constituted professional misconduct.

We find that Dr. Ross's conduct towards Nurse Z in the presence of Patient A and his decision to ask a patient to yell out as a means to deal with interpersonal difficulties between Dr. Ross and Nurse W, both of which were admitted by Dr. Ross, were instances of egregious behaviour that bring the profession into disrepute and which can affect the trust of patients and the delivery of care in medical settings.

The problematic interaction with staff occurred over more than a decade. In any hospital environment, as in any high tension, high stress environment, a culture develops, which can include humour, often of the gallows type, and easy familiar interaction as well as sudden and extreme interpersonal strife. Relationships can be intense. Over the years, hospitals, society in general, and the medical profession in particular, have become aware that there are and need to be boundaries and rules that govern interaction in the work place, in order to control and address issues of workplace harassment, workplace safety, respect, and power imbalance. The behaviours of Dr. Ross cannot be written off as "horseplay" or "silly" or "flirtatious" as his behaviour (including inappropriate touching and remarks) was both persistent and unwanted. We note that when he was informed that a behaviour was unwanted, that behaviour ceased to occur. The rubbing of pregnant bellies without permission was an invasion of privacy. There is conflict in the testimony as to whether Dr. Ross's hand wandered toward the breast or groin of Nurse Z and Nurse U. We cannot conclude, on a balance of probabilities, that this behavior did occur, but the touching in itself was inappropriate and unprofessional.

In determining whether a behaviour is acceptable in the workplace, we felt it appropriate to consider factors such as, the relationship and rapport of the individuals involved, the power balance between them, and the location of the interaction. There appears in this case to have been a distinct misapprehension on the part of Dr. Ross as to the nature of the relationship and rapport between himself and the staff members involved in these matters. Dr. Ross admitted overstepped boundaries with nursing staff, causing pain and hurt feeling. While Dr. Ross may have been motivated by a desire to relate to the staff, and some of his actions (such as placing his hands in his

pants and poking at people) can be ascribed to his illness, Dr. Ross in some cases remained aware of his actions and knew or ought to have known the standards expected of a physician. The Committee finds that the public, including hospital staff, have the right to expect professional and respectful conduct from members of the profession.

Based on the foregoing the Committee finds that Dr. Ross committed acts of professional misconduct pursuant to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* ("O/Reg. 856/93"), in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful or unprofessional.

(iv) Did Dr. Ross fail to maintain the standard of practice of the profession before January 1, 1994.

There is an allegation of conduct occurring prior to 1994, that must be dealt with as an alleged "failure to maintain the standard of practice of the profession", as defined in paragraph 27.21 of Regulation 448 of the Revised Regulations of Ontario, 1980 and paragraph 29.22 of Regulation 548 of the Revised Regulations of Ontario, 1990. This allegation concerns the rubbing of Nurse U's pregnant belly in 1987. We do not find, on a balance of probabilities that Dr. Ross reached down toward Nurse U's groin, as alleged. While Dr. Ross's rubbing of Nurse U's belly without her permission was unwarranted and unprofessional behaviour, it did not occur in the presence of patients, and because it was a single incident, we do not find such conduct warrants a finding of "failure to maintain the standard of practice". Therefore, this allegation is not proven.

(v) Was Dr. Ross incompetent in his care of patients?

The Committee heard no evidence that Dr. Ross's medical care of patients demonstrated incompetence. His judgment appears to have been intact in terms of his

examinations, diagnosis and treatment plans. Where we heard testimony from nurses disputing Dr. Ross's orders and care of patients, we concluded that, while there were professional differences in approach, Dr. Ross's approach was not improper. No cogent and convincing evidence was presented that Dr. Ross was incompetent.

We were concerned about Dr. Ross's behaviour in asking a patient to yell out as a way of getting Nurse W's attention. As set out above, we have found this behaviour to fall under the rubric of unprofessional behaviours. While inappropriate, we do not find that this behaviour or other found behaviour were sufficient to warrant a finding of incompetence. Therefore, we find the allegation of incompetence as defined by ss.52 (1) of the Code, not proven.

Summary of the Findings

In summary, the Committee finds that Dr. Ross committed acts of professional misconduct regarding allegation #2 in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful or unprofessional. Allegation #1 regarding sexual abuse of patients, allegation #3 regarding failure to maintain the standard of practice of the profession and the allegation of incompetence are not proven.

The Committee directs the hearing office to schedule a penalty hearing at the earliest possible date.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Stephen George Ross, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identities of the witnesses or any information that would disclose their identities under ss.47(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also made an order under ss.45(3) of the Code to prohibit the publication or broadcast of the name or any information that could identify Dr. Ross's eldest son or his eldest son's personal health information.

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

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

Indexed as: **Ross (Re)**

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and –

DR. STEPHEN GEORGE ROSS

PANEL MEMBERS: DR. M. GABEL (CHAIR)
B. MOSELEY-WILLIAMS
DR. M. WOLFISH
J. ASHMAN
DR. C. J. CLAPPERTON

Hearing Dates: June 7-10, 2004
Decision/Released Date: October 18, 2004

Penalty Hearing Dates: November 2-3, 2004
Penalty Decision/Released Date: December 7, 2004

Publication Ban

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on June 7 to 10, 2004. On October 18, 2004, the Committee released its written decision that Dr. Ross committed professional misconduct:

- under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* ("O/Reg. 856/93"), in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful and unprofessional.

The Committee heard evidence and submissions on penalty and costs on November 2 and 3, 2004 and reserved its decision.

PUBLICATION BAN

The Discipline Committee ordered that no person shall publish or broadcast the identities of the witnesses or any information that would disclose their identities under ss.47(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

The Committee also made an order under ss.45(3) of the Code to prohibit the publication or broadcast of the name or any information that could identify Dr. Ross's eldest son or his eldest son's personal health information. The Committee delivered separate written reasons for this order on June 8, 2004.

EVIDENCE AND SUBMISSIONS ON PENALTY AND COSTS

The Panel heard witnesses called by Dr. Ross as well as submissions as to penalty from counsel for the College and counsel for Dr. Ross. The witnesses heard were Dr. N and Dr. O. Counsel for Dr. Ross also submitted a letter from Dr. P. as well as pre-hearing letters that were exchanged between the College and the defence.

We did not find the review of the letters between the College and the defence that were exchanged prior to the hearing to have any weight in determining penalty. They were noted to be directed toward the issue of costs and were so reviewed in that context.

Dr. N

Dr. N. had previously testified before the panel during the evidentiary stage of the hearing, and was accepted as an expert witness. He had made the original diagnosis of Tourette's Syndrome (TS) and Obsessive Compulsive Disorder (OCD), as well as documenting the presence of interpersonal difficulties, in Dr. Ross. It was his opinion that Dr. Ross had made major gains in controlling his illness since the original diagnosis, still had incremental gains that could be made, and was able to return to practice seeing both male and female patients. He testified about Dr. Ross's insight and appreciation of his role in his situation and his willingness to make changes. He pointed out that there is no cure for the illness, but satisfactory control can be achieved, notably with the use of Cognitive-Behavioral Therapy (CBT) and the judicious use of medications. He was unable to estimate the total time in therapy needed, nor how long he should be receiving CBT. In his prior testimony, as well as in this phase of the hearing, he did not relate all the noted behavior to the presence of the illnesses. He has seen Dr. Ross twice since the original diagnosis and, both times, he felt Dr. Ross was progressing well, but has not had reports from his treating psychiatrist, nor observed him in the practice setting. He agreed that the only true test of his improvement is in how he functions in practice, supervised or not. He plans to continue to see Dr. Ross and, while not directly providing on the ground therapy and supervision, remain as the coordinator of other related care. The Committee found him to be of assistance to the panel, and noted his optimistic view of the progress of Dr. Ross.

Dr. O.

Dr. O. is the older brother of Dr. Ross. He was placed in a supervisory capacity of Dr. Ross by the criminal court as a bail condition. He was in contact on a regular basis with the Clinic Administrator as well as Chief Nurse where Dr. Ross practised. He testified that there have been no reports to him of any difficulties in Dr. Ross's interaction with patients and staff at the clinic. He described an increased ability by Dr. Ross to socialize, to be aware of social cues, appropriate interpersonal distances, and to control unwanted tics such as poking people and self-adjustment

of his clothing and genitalia. He had not seen Dr. Ross in his medical practice, but relied on the reports from the staff. The Committee found his testimony to be direct, truthful, caring and observant, and were also aware that, as his brother in a close-knit family, his testimony had to be placed within the light of testimony heard from non-related participants.

Dr. P.

Dr. P. is the Psychiatrist most involved in the direct treatment of Dr. Ross. The Committee was presented with a letter summarizing the treatment course and prognosis. While Dr. P was not present to be cross examined on this letter, the College accepted the letter as an exhibit with the caveat that the Committee be aware of the possible necessity to give it less weight than tested testimony. The letter summarizes the known diagnosis, the form of CBT and meditation training that has been utilized, and the progress made over twelve visits. He states that Dr. Ross has made "gains in recognizing and ignoring bodily sensations". The Committee took note of Dr. P.'s comments concerning "his understanding of other people's experience. Dr. Ross has had great difficulty in this area…" and "…Some things which seem like obvious boundary issues to me might not have occurred to him". He noted that Dr. Ross is willing to "adopt changes to his way of practicing medicine". He concludes that progress has been made in many areas, sees "some degree of progress in interpersonal skills and his ability to empathize with others" and expects to continue working with him in these areas. The Committee found the letter, albeit untested, to be informative and useful in determining the appropriate penalty.

Testimony of Stephen George Ross and his wife

The Committee reviewed testimony from the earlier portion of the hearing that had been noted to relate more to this phase than the liability phase, including the testimony of Dr. Ross and his wife.

Brief of Authorities

The Committee also received briefs of Authorities for Penalty Hearings from the College and defence. While informative, the panel had difficulty in relating the findings and penalties in these cases to the unique set of facts, motivations and reported treatment responses noted in this proceeding.

PENALTY SUBMISSIONS

The Committee received and considered submissions on penalty and costs and draft orders from Counsel for the College and counsel for Dr. Ross.

DECISION AND REASONS ON PENALTY AND COSTS

The panel is aware that its most necessary task is protection of the public, whatever the underlying cause may be of the disgraceful and unprofessional behaviour. In considering this, we note that in our findings we alluded to the fact that not all of Dr. Ross's behaviour could be attributed to the TS or OCD. We took into consideration the facts of what he did do, to whom, the presence of a treatable illness, the noted deficiencies in interpersonal awareness, the lack of direct, clear feedback in the last ten years, the lack of any predatory motivation, his remorse, the progress since his diagnosis, and the need for the recipients of his behaviour to feel that positive steps have been taken to prevent future inappropriate behaviour to patients and staff. All of those who testified to the allegations of inappropriate behaviour were female. Until this time, Dr. Ross has been restricted to seeing only male patients.

The Committee sees the need, going forward, to be sure of the appropriateness of Dr. Ross's behaviour with female patients. We also are of the opinion that continued insight and rehabilitation of Dr. Ross is necessary for the future protection of the public, as well as allowing him to perform at the highest possible standards in providing medical services. Our penalty has been crafted to meet these two primary objectives.

The panel was also cognisant of the need for specific and general deterrence, as well as the need to maintain the reputation and integrity of the profession and its ability to govern its members.

Mitigating factors taken into consideration include:

- A lack of malicious intent
- Expressed remorse for his behaviour
- The presence of insight and motivation to change behaviour.

- His cooperation with and following the orders put in place by the College
- Our awareness of his therapeutic progress since the time allegations were presented at the CPSO and dealt with in criminal court.
- His professional support network.

Much progress still needs to be made in the interpersonal area, and he must be tested in the actual environment of a medical practice to see if the lessons learned stay in play under the stresses of a practice. For this we believe that supervision within the practice environment will both protect the public and support staff. While this protection is primary, the provision of supervision will hopefully remind him of and reinforce the material learned in continued therapy. Taking the oral and written evidence presented in a balanced way, we feel that he has not yet shown a fully realized understanding of some areas relating to his illness and to boundaries. Only continued treatment can address this in a meaningful way.

The panel is of the opinion that this is not a case where a costs order is appropriate.

ORDER

The Discipline Committee therefore orders and directs that:

1. Dr. Ross appear before the Committee to be reprimanded and the reprimand be recorded in the Register.
2. The Registrar suspend Dr. Ross's licence for six (6) months commencing the date of this order. The suspension will itself be suspended provided that Dr. Ross complies with the following conditions and requirements, which shall be terms, conditions and limitations on his certificate of registration.
3. Dr. Ross receive treatment by a Psychiatrist of his choosing acceptable to the College, until the later of (a) the date on which the treating psychiatrist is satisfied that the treatment has been successful, and (b) the date which is two years from the date of this order. The treating Psychiatrist shall undertake to provide reports every six (6) months to the Registrar reporting on the progress of treatment of the conditions that influence Dr.

Ross's ability to practice medicine, with the first report due six months from the date of this Order. Dr. Ross shall be responsible for any financial obligations relating to the treatment and reporting.

4. Dr. Ross submit to the College the name of a physician acceptable to the College who act as his practice supervisor and will report every three months to the College as to the appropriateness of his behaviour and interaction with patients and staff at his practice location, as well as the appropriateness of his workload. This supervised practice and reporting shall continue for at least one year. Following that year, Dr. Ross shall continue in supervised practice until his treating Psychiatrist is of the opinion that Dr. Ross has a low risk of re-offending and has reported that opinion to the College. Dr. Ross shall be responsible for any costs relating to his practice supervision and reporting.

5. For the period of one year, Dr. Ross may only attend female patients in the presence of a registered health professional who is acceptable to the College and will report on the appropriateness of Dr. Ross's behaviour to his practice supervisor.

6. Dr. Ross may not practice at S.M. Hospital for a period of one year from the date of this order, and only after conditions in paragraph 4 above are satisfied.

7. Dr. Ross shall deliver to the College certificates of completion of the courses taken in Boundaries and Communication during the past two years.