NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Stanley Bo-Shui Chung, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that could disclose the identity of the patients referred to during the course of the hearing. This includes patients identified in oral or documentary evidence. Identifying information includes, but is not limited to, the initials of patients, the name of the Church they attend, their place of residence or place of employment under 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.

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

> Every person who contravenes an order made under … section 45 or 47… is guilty of an offence and on conviction is liable,
>
> > (a) in the case of an individual to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence; or
> >
> > (b) in the case of a corporation to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence.

Indexed as: Chung, S. (Re)

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. STANLEY BO-SHUI CHUNG

PANEL MEMBERS:

DR. J. WATTS (CHAIR)
D. GIAMPIETRI
DR. P. CHART
M. FORGET

Hearing Date:	April 8 to 11, April 22 to 26 and May 3, 2013
Decision Date:	February 10, 2014
Release of Written Reasons:	February 10, 2014

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the "Committee") of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on April 8 to 11, April 22 to 26 and May 3, 2013. At the conclusion of the hearing, the Committee reserved its decision on finding.

ALLEGATIONS

The Notice of Hearing alleges that Dr. Stanley Bo-Shui Chung committed an act of professional misconduct:

1. under paragraph 27.29 of Regulation 448, R.R.O. 1980, made under the *Health Disciplines Act*, in that he engaged in sexual impropriety with a patient;
2. under paragraph 27.32 of Regulation 448, R.R.O. 1980, made under the *Health Disciplines Act*, and under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional;
3. under clause 51(1)(b.1) of the Health Professions Procedural Code (the "Code"), Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 ("RHPA"), in that he sexually abused a patient; and
4. under paragraph 27.21 of Ontario Regulation 448/80 and paragraph 29.22 of Ontario Regulation 548/90 made under the *Health Disciplines Act*, R.S.O. 1980 and R.S.O. 1990, respectively, and under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he failed to maintain the standard of practice of the profession.

The Notice of Hearing also alleges that Dr. Chung is incompetent as defined under the Code.

RESPONSE TO ALLEGATIONS

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

BACKGROUND

Dr. Stanley Bo-Shui Chung is a 66 year-old physician who was born in China and raised in Hong Kong. He attended medical school at the University of Wisconsin graduating in 1971. Dr. Chung came to Toronto and completed an internship at the Toronto General Hospital in 1972. He started medical practice in 1972 and has been in solo practice since 1978. Dr. Chung's patients were mostly young women of reproductive age (80 to 90%) who attended for obstetrical and gynaecological care. He mainly served the Chinese community. He had privileges in obstetrics and newborns at two Toronto hospitals until 1996. He tapered down his obstetrical practice in the late 1980's, scaled down his practice in recent years and retired from practice in the spring of 2012.

The allegations in this case arise from a complaint made by a patient, Ms A, in January 2010, alleging that Dr. Chung performed excessive breast and pelvic examinations on her between the ages of 15 and 19 years old (1986 to 1991), that he touched her improperly and that he did not respect her privacy.

The College then undertook a broader investigation of Dr. Chung's practice pursuant to section 75(1)(a) of the Code. The College retained Dr. X to carry out a review of Ms A's chart and nineteen other patient charts. Dr. X produced three reports raising concerns about Dr. Chung's practice. Following review of these reports, the Inquiries Complaints and Reports Committee of the College ("ICRC") referred the matter to the Discipline Committee with the allegations stated in the Notice of Hearing.

WITNESSES

The College called oral evidence from Ms A and four of the nineteen section 75 patients: Patient 11, Patient 14, Patient 13 and Patient 2. The College also called expert evidence

from Dr. X. Dr. Chung testified in response to the allegations. He also called the evidence of his wife, Mrs. M, who was his receptionist. Dr. Chung did not call any expert evidence.

THE ISSUES

The allegations in the Notice of Hearing raise a number of issues that the Committee was required to address:

I. The Ms A Case

(i) Did Dr. Chung fail to maintain the standard of practice of the profession in his care and treatment of Ms A?

(ii) Did Dr. Chung engage in sexual impropriety with Ms A?

(iii) Did Dr. Chung engage in disgraceful, dishonourable or unprofessional conduct in regard to Ms A?

II. The Section 75 Cases

(i) Did Dr. Chung fail to maintain the standard of practice of the profession in his care and treatment of the nineteen section 75 patients?

(ii) Did Dr. Chung engage in disgraceful, dishonourable or unprofessional conduct in regard to the nineteen section 75 patients?

(iii) Did Dr. Chung engage in sexual impropriety or sexual abuse with any of the nineteen section 75 patients?

III. Is Dr. Chung incompetent?

APPLICABLE LEGISLATION AND LEGAL PRINCIPLES

Burden and Standard of Proof

The College has the burden of proving an allegation of professional misconduct or incompetence against a member. The standard of proof is on a balance of probabilities.

Professional Misconduct - "Sexual Abuse" or "Sexual Impropriety"

Sexual abuse of patients by a health professional is prohibited by the RHPA. Section 51(1) of the Code provides in part:

> 51. (1) A panel shall find that a member has committed an act of professional misconduct if,
>
> …
>
> (b.1) the member has sexually abused a patient

Section 1(3) of the Code defines "sexual abuse" as:

> (a) sexual intercourse or other forms of physical sexual relations between the member and the patient,
>
> (b) touching, of a sexual nature, of the patient by the member, or
>
> (c) behaviour or remarks of a sexual nature by the member towards the patient.

Section 1(4) of the Code states for the purposes of subsection (3),

> "Sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

Prior to the coming into force of the RHPA, the *Health Disciplines Act*, R.S.O. 1990, c. H.4 (the "HDA 1990") and its predecessor, the *Health Disciplines Act*, R.S.O. 1980, c. 196 (the "HDA 1980"), were the applicable statutes.

Professional misconduct in the regulations under both the HDA 1980 and the HDA 1990 includes "sexual impropriety with a patient" [see section 27(29) of Regulation 448, R.R.O 1980 and section 29(30) of Regulation 548, R.R.O. 1990]. The regulations under the HDA 1990 and the HDA 1980 do not define "sexual impropriety".

If the alleged sexual misconduct occurred prior to December 31, 1993 (the date the RHPA came into force), the HDA and its applicable regulations apply. If the alleged sexual misconduct occurred after December 31, 1993, the RHPA applies.

Professional Misconduct - Disgraceful, Dishonourable or Unprofessional Conduct

Under section 27(32) of Regulation 448, R.R.O. 1980, section 29(33) of Regulation 548, R.R.O 1190 (made under the HDA 1980 and HDA 1990, respectively), and under section 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act,* 1991, S.O. 1991, c. 30, a finding of professional misconduct may be made where there is an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Professional Misconduct - Failure to Maintain the Standard of Practice

A failure to maintain the standard of practice of the profession is an act of professional misconduct under section 1(1)2 of O. Reg. 856/93, made under the *Medicine Act, 1991,* S.O. 1991, c.30. Under the predecessor legislation, a failure to maintain the standard of practice of the profession was an act of professional misconduct under paragraph 27.21 of Ontario Regulation 448/80 and paragraph 29.22 of Ontario Regulation 548/90 made under the HDA 1980 and the HDA 1990, respectively.

The standard of practice has been defined as the standard expected of the ordinary, competent practitioner in the member's field of practice. It is not necessary to find that there has been harm in order to find there has been a failure to maintain the standard of practice.

The duty of the Committee is to review all the evidence and determine what the standard of practice was at the material time and whether it was maintained.

Incompetence

To make a finding of incompetence under s. 52(1) of the Code, the Committee must find that the member's professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the member is unfit to practise or that his practice should be restricted.

Incompetence differs from professional misconduct in that a finding of professional misconduct will be based on events that occurred in the past. Incompetence is assessed based on the member's care of patients in the past, but the Committee must be satisfied that the member is unfit to practise or that his practice should be restricted at the time of its decision in order to make a finding of incompetence.

EXPERT EVIDENCE

The College called Dr. X to testify as to the standard of practice of the profession and to opine on whether or not Dr. Chung failed to maintain the standard of practice of the profession with respect to Ms A and the nineteen patients identified during the section 75 review. As indicated above, Dr. Chung did not call any expert evidence on the standard of practice of the profession.

Counsel for Dr. Chung disputed that Dr. X should be qualified as an expert witness. He argued that Dr. X was not in practice at the time most of the events at issue took place. He also argued that she practises in a university setting which is different from the solo practice of Dr. Chung.

After hearing the submissions of both parties and considering the case law, the Committee accepted Dr. X as an expert in family medicine. The Committee recognized, however, that Dr. X qualified more recently than Dr. Chung and reserved its views as to what weight to give her evidence, particularly with respect to standards of practice prior to 2002. The Committee did not agree with the defence submission that Dr. X's practice in an academic setting disqualified her from providing expert opinion evidence in this case. Furthermore, she has an active clinical practice in family medicine and sees a number of patients with complaints similar to those of Dr. Chung's patient population. The Committee did take note of the fact, however, that there were a number of variations in the practices of Dr. X and Dr. Chung, which will be discussed further in these reasons.

The Committee also heard submissions on the admissibility of Dr. X's expert reports and the brief of documents she relied upon. Dr. Chung objected to either being entered as exhibits at the hearing. The Committee has the discretion to admit the expert's report as evidence under Rule 12.05.4 of the Discipline Committee Rules, even in circumstances in which the expert testifies. In exercising this discretion, the Committee considered procedural efficiency, the nature of the evidence and whether there would be any resulting prejudice to Dr. Chung. The Committee determined it would admit Dr. X's reports (January 5, 2012, January 9, 2012, and May 29, 2012) as evidence. The reports in question are lengthy and complex. Having them entered as evidence was of assistance to the Committee. Additionally, the Committee was satisfied that there would be no prejudice to the member by having these reports admitted as evidence. The reports were provided to Dr. Chung in advance of the hearing, and Dr. X testified at the hearing and was cross-examined at length. The Committee recognizes that some of the evidence in the written reports was qualified or altered during oral examination and took this into account when referring to the evidence in the written reports. It is also a matter of practice for this Committee to accept into evidence expert reports, even when the expert testifies.

There was also an objection to the admissibility of the brief of documents relied upon by Dr. X. The Committee acknowledged that this brief contains hearsay evidence, but admitted the documents for the limited purpose of understanding the basis of Dr. X's opinions. That is, what documents did she review and rely upon in reaching her conclusions. The Committee had regard for the decision in *R. v. Lavallee*, [1990] 1 S.C.R. 852 at paragraph 66, which stands for the proposition that documents can be admitted for the limited purpose of showing what the expert based her evidence upon and not for the truth of their contents. The Committee did not rely upon any of the hearsay contained in these documents. The Committee is able to disregard evidence that is inadmissible.

THE STANDARD OF PRACTICE OF THE PROFESSION

In making its determination of the standard of practice applicable in this matter, the Committee considered the following:

- The conduct at issue occurred over 25 years. During this time, patterns of practice evolved;
- Changes in practice patterns may be embraced and implemented inconsistently throughout the profession;
- As with many areas in medical practice, there were no written guidelines or policies upon which the Committee could rely in this matter;
- The Committee was faced with the evidence of a single expert witness (Dr. X) who was highly critical of the care provided by Dr. Chung. While the allegations of failing to maintain the standard of practice were contested, there was no opposing expert opinion with respect to the standard of practice or whether or not Dr. Chung failed to maintain the standard of practice;
- Like so many areas in medicine, the decision to act or not to act often rests upon the judgment of the physician, given the circumstances he or she faces. In such cases, the opinion of one physician, even if qualified as an expert, may not accurately reflect the spectrum of care or variations in practice considered as standard community practice;
- In assigning weight to the expert evidence, the Committee noted that Dr. X and Dr. Chung were educated in different eras, their styles of practice differed as did the patient population they served. Dr. Chung's patients were challenging patients presenting with multiple problems and at high risk for issues such as STD's and pregnancy complications. The Committee was not certain as to the extent that Dr. X's patients were truly comparable, although Dr. X did see a number of patients with complaints similar to those of Dr. Chung. Their practices also differed, in that she has teaching and administrative responsibilities and is affiliated with a teaching hospital in a relatively affluent area.
- The Committee was mindful of the requirement for clear, cogent and convincing evidence to support the findings made.

The Committee gave careful thought to its determination of the standard of practice in this matter. In some instances, the standard was clear. At other times, it was not or it was insufficiently clear to ground a finding of failure to maintain the standard of practice of the profession.

There were a number of recurring concerns that were raised by Dr. X with respect to Dr. Chung's care and treatment of Ms A and the other nineteen patients. Prior to engaging in an analysis of each individual case, the Committee will set out, in general terms, Dr. X's opinions with respect to the standard of practice, Dr. Chung's evidence with respect to his general practice, and the Committee's findings with respect to the applicable standards of practice. Whether or not Dr. Chung failed to maintain the standard of practice of the profession will then be analyzed with respect to each individual case, based on the particular facts of each case.

Office Procedure / Record Keeping

Dr. Chung uses the SOAP format in his records. Dr. X testified that Dr. Chung's medical records were well organized, logical and in the typical format. In specific cases, she did take issue with Dr. Chung's failure to document reasons for examination, counseling that occurred or special care taken with respect to examinations of virginal patients. These concerns will be discussed later in these reasons with respect to the individual patients whose care is at issue.

With respect to his standard office procedure, Dr. Chung explained that his normal practice was to take the patient history, after which patients were directed to disrobe and go to the examination table. Hooks to hang clothing were visible on the wall. A curtain, which could be drawn, hung from the ceiling between the examination table and Dr. Chung's desk. While the patient was disrobing, Dr. Chung would write in the chart with his back to the patient and the examination table. He testified that he did not leave the room and the drawing of the curtain was mostly left to the patient. Dr. Chung testified that this set up, "the Mayo Room", was an arrangement which was expedient. Dr.

Chung's evidence was that a folded drape was on the examination table which was also covered by running paper.

Dr. X had no concerns regarding the set-up of Dr. Chung's office. The College argued, however, that Dr. Chung failed to maintain the standard of the practice of the profession by (i) failing to pull the curtain across the room in order to provide his patients with privacy when changing; and (ii) failing to provide patients with a drape or cover to protect their privacy while he was examining them. Dr. X testified that the comfort and dignity of the patient must be respected.

The Committee agrees that the standard of practice of the profession is to take appropriate measures to respect the comfort and dignity of the patient. In the Committee's view this extends to the provision of privacy for a patient when changing and appropriate draping or coverage for a patient during a physical examination of intimate areas.

Indications for Examinations of Intimate Areas

Dr. X opined that a competent family physician would reasonably be expected to perform examinations of a sensitive nature only when absolutely required to formulate a diagnosis and/or treatment plan.

In view of the power differential that exists in the doctor-patient relationship, she testified that physicians need to have a degree of self-awareness so that vulnerable patients are protected. Dr. X testified that to maintain the standard of practice of the profession, sensitive examinations (i.e. examinations of intimate body parts) should only be done when clinically warranted.

Dr. Chung testified that his philosophy is not to take short cuts in patient encounters and never to assume that the same complaint is the same problem. Dr. Chung testified that with a gynaecological complaint, he would always do a pelvic examination, even if 90%

were normal or the patient was in the day before. He agreed in cross examination that if the examination did not contribute to diagnosis, it would not be medically indicated.

Dr. Chung agreed that physicians should have heightened sensitivity when dealing with sexual body parts, but he also testified that he treated these examinations the same as he would taking one's blood pressure. He testified that breast and pelvic examinations are "nothing special" or different and are done with all complaints related to the genitourinary systems. He cited the main text he used at the time (Bedside Diagnostic Examination, McGowin & McGowin) which was published in 1969 and which illustrates the thinking at that time (Exhibit 23, 24).

In many cases, Dr. X was critical of Dr. Chung for carrying out breast and pelvic examinations in circumstances in which the patient had attended for a specific complaint, which was unrelated to an examination of these areas. She criticized Dr. Chung for "converting" these appointments into general assessments at which breast and / or pelvic examinations were conducted. Dr. Chung testified that he would complete a general assessment when a patient came in for a specific complaint if they were overdue for a general assessment or to save them a trip back. The Committee accepted this explanation by Dr. Chung as to the reason for his practice of conducting full examinations.

Dr. X was critical of Dr. Chung's practice of routinely carrying out breast and pelvic examinations, as she viewed these intimate examinations to be carried out too often and without indication. Dr. Chung testified that breast and pelvic examinations are part of a general assessment. Dr. X explained that there has been an evolution in the standards of medical practice over several decades. Dr. X testified that in the 1970's and 1980's it was common to pair breast and pelvic examinations. She testified, however, that by the 1990's, it was accepted that this was unnecessary (JAMA, May 2, 2001). Dr. X testified that since the early 1990's, there has been a major shift in practice to evidence-based care.

Dr. X testified that in the 1990's and until more recently, there was also a shortage of family doctors, and therefore a need to be selective and focus on signs and symptoms.

She testified that full physical examinations cannot be done at every visit because of physician resources. She testified that it did not seem that Dr. Chung was selective as to when to conduct such examinations.

Dr. X also testified that Dr. Chung showed an unusual degree of interest in patient's menstrual cycles. Dr. Chung denied any special interest in menses. He testified that it was routinely documented as an essential part of the female reproductive system. Further, gynecology and obstetrics was the focus of his practice. The Committee accepted Dr. Chung's explanation for his practice in this regard.

In cross examination, Dr. X was provided with a copy of the Policy Statement of the Society of Obstetricians and Gynaecologists of Canada (SOGC), 2003 (No. 125, March 2003), regarding "The Presence of a Third Party During Breast and Pelvic Examinations." This document starts by stating "The [SOGC] would like to emphasize that a complete medical examination should include a breast and pelvic examination" (Exhibit #15). While this policy is directed at third party presence, it is nonetheless advocating an inclusive as opposed to a selective approach. Dr. X did not agree that this document represented the standard of practice of the profession in family medicine.

Dr. Chung also provided the Committee with an excerpt from "Practical Gynecology: A Guide for the Primary Care Physician" published by the American College of Physicians in 2002. It states at page 4, "A complete gynecologic examination includes breast examination and a pelvic examination."

The Committee accepts that there should be a legitimate medical reason for performing intimate examinations, regardless of whether these are done at the time of a specific or general assessment. While accepting Dr. X's opinion that the standard of practice requires that intimate examinations should be clinically warranted, the Committee interprets this in a general sense. The Committee was not persuaded that such examinations should only be conducted when absolutely required to formulate a diagnosis and/or treatment plan. In the Committee's view, this is too rigid a standard of practice and may not take into account factors such as patient age, history, patient risk

factors, patient concerns and family history. The Committee is of the view that a determination as to whether or not such examinations are appropriate should depend on the particular circumstances of the patient and the judgment of the physician.

Pelvic Examinations of Virginal Patients

Dr. X testified that a pelvic examination is usually first done after a patient becomes sexually active, or when requesting to start oral contraceptives. In many cases, she was critical of a number of pelvic examinations that Dr. Chung conducted on virginal patients. Dr. X testified that it is expected that the sensitivity of virginal patients will be respected in the manner of their examination. She testified that normally digital vaginal examination is deferred until patients are sexually active.

Dr. Chung testified that examination of his virginal patients was dictated by the circumstances of the particular case. In addition, he noted that in his patient population, some mothers would bring their daughters in to have him check for sexual activity (a virginity test). The Committee will have more to say on this issue later in its reasons.

Dr. Chung explained that he uses three different notations in his charts for pelvic examinations: (i) GU - which means a visual inspection only (no penetration); (ii) Vag - which means a vaginal or bimanual examination including a visual inspection; and (iii) Pelvic - a full examination including use of a speculum, taking of swabs, pap tests, and a bimanual examination.

The Committee agrees that the standard of practice of the profession requires physicians to be sensitive when examining virginal patients. However, whether or not to conduct an internal examination on a virginal patient will be influenced by a variety of factors (for example; age, symptoms and concerns regarding structural abnormalities). The Committee concludes that unless there is a reasonable evidentiary basis to do so, the standard of practice of the profession is that pelvic examinations of virginal patients are normally not performed.

Dr. X also testified that a competent family physician would reasonably be expected to document the reason for examination, the counseling that occurred and the special care taken in the process of pelvic examination of virginal women. The Committee accepts that this represents an ideal, but was not persuaded that this degree of documentation is a standard of practice of the profession.

Breast Examinations

Dr. Chung explained the notations that he uses for breast examinations: (i) the use of "Stage II" or "Stage III" - refers to a visual examination and reflects the Tanner scale; (ii) "Breast 0" means no findings and could reflect a visual inspection or palpation; or (iii) there is a description of the findings.

Dr. X testified that at a well-child visit, breast development may be recorded as a Tanner stage and this is perfectly appropriate. Dr. X was of the opinion, however, that Dr. Chung conducted breast examinations in some patients before such examinations were clinically indicated. Dr. X testified that the first breast examination (involving palpation of the breasts) is usually performed at the same time a pelvic examination is done, that is when a patient is to start oral contraceptives or other hormonal therapy.

In many cases, Dr. X was critical of the number of breast examinations conducted by Dr. Chung. Dr. X reassessed her conclusions about the number of unwarranted breast examinations when informed that "Breasts 0" could be either inspection or palpation. She had assumed the "Breasts 0" indicated palpation. Her evidence, however, was that Dr. Chung still conducted an excessive number of breast examinations with respect to many patients.

Dr. X was also critical of Dr. Chung's practice of routinely pairing breast and pelvic examinations. She testified that at her interview with Dr. Chung, he indicated he was more comprehensive than she was and they had different styles of practice. As stated above, Dr. Chung's practice was to conduct breast examinations as part of a complete gynaecological examination. He also testified that more recently, he changed his practice

from routinely doing breast examinations with gynaecological assessments to conducting breast examinations according to the patient's circumstances, but still always conducted breast examinations as part of a general assessment.

Dr. X testified that in the 1990s, clinical breast examinations were done as preventive care and there were no clear guidelines as to how often clinical breast examinations should be done. Examination was clearly indicated when there were breast symptoms.

With respect to the onset of breast examinations, the Committee accepted Dr. X's evidence that the standard of practice of the profession is that usually a patient's first breast examination involving palpation is conducted at the same time as a patient's first pelvic examination. That said, the Committee can easily contemplate circumstances in which a breast examination could be conducted at an earlier age if the patient presented with complaints related to the breast or breast abnormalities were noted by the physician.

With respect to Dr. X's opinion that it was improper for Dr. Chung to routinely pair breast and pelvic examinations, the Committee was not persuaded that there is, or was, a clear standard of practice with respect to pairing of breast and pelvic examinations during the applicable time periods. Furthermore, with respect to the frequency of breast examinations, the Committee was not persuaded that there is, or was, a clear standard of practice with respect to how frequently breast exams should be conducted. The appropriate frequency of breast examinations will depend on the circumstances of each individual patient and the judgment of the physician.

Rectovaginal Examinations

Dr. X's evidence was that the use of rectovaginal examinations should be reserved to rare instances where tumour of the rectovaginal wall is suspected. She also testified that one should avoid using rectal or rectovaginal examinations to detail the exact anatomy of pelvic organs, as this information can be obtained by less invasive means (trans-abdominal ultrasound) if absolutely essential to develop a clinical plan.

Dr. Chung testified that he was taught that rectovaginal examination should always be done as part of a complete physical examination. Dr. Chung drew attention to a 1976 text (exhibit #26) "Current Obstetric and Gynecological Diagnosis and Treatment", which at page 83, indicates:

> "…that at the completion of the bimanual pelvic examination, a rectovaginal examination should always be done."

Dr. Chung testified, however, that in his practice it was usually unnecessary, as in most cases sufficient information could be obtained by vaginal examination alone. In his practice, Dr. Chung testified that he used rectovaginal examinations only to confirm a retroverted or retroflexed uterus, to assess the size and regularity of the uterus, or if he needed to know what was going on in the pelvis (i.e. a possible pelvic mass, or stool behind the uterus). He admitted that rectovaginal examinations can be uncomfortable but also noted they are well accepted by patients with proper technique.

Dr. X was of the view that rectovaginal examinations should be limited to the oncology setting. She testified that it is not a screening test, and detailed anatomic information about the uterus in most patients is irrelevant. She disagreed with Dr. Chung that it was a necessary part of a pelvic examination when the uterus is retroverted and retroflexed. She agreed that rectovaginal examination can be used to assess a pelvic mass but testified this is not typically done in family practice. Her training was that rectovaginal examinations were part of pelvic examinations only in the gynaecology/oncology setting.

The Committee was not persuaded that rectovaginal examinations should be limited to the oncology setting or to the rare circumstances in which a tumour of the rectovaginal wall is suspected. The Committee was of the view that there may be circumstances outside oncology practice when rectovaginal examinations may be appropriate - depending on the patient's symptoms/findings and the physician's experience. The Committee was not persuaded that rectovaginal examinations should never be done in family practice. In reaching this conclusion, however, the Committee placed no reliance on the 1976 text on which Dr. Chung relied finding it to be distant from the reality of

practice, overly inclusive and dated. Even Dr. Chung did not follow the practice advocated in the text (that rectovaginal examination should always follow bimanual pelvic examination). Nonetheless, as with other intimate examinations, there needs to be a legitimate reason to conduct a rectovaginal examination based upon patient circumstances and physician judgment.

Examinations during Pregnancy

Dr. Chung testified that his standard procedure during pregnancy was to assess the size of the uterus and growth of the fetus by vaginal examination in the first trimester until a fetal heart beat could be detected. He testified his practice developed in the 1970's before ultrasound was readily available.

In the second trimester, he would check the cervix once or twice for cervical incompetence, the incidence of which he testified was high in his practice. When questioned about the use of ultrasound in diagnosing cervical incompetence, he testified that it is not a screening tool, and as a targeted strategy, he would have to do it serially on all his patients. It takes time, is inconvenient for the patient, and by the time he receives the information, the baby could be lost. He cited Patient #8 as an example of one of his successes in identifying cervical incompetence through manual examination.

In the third trimester, he would check the cervix at 36 weeks for signs of impending labour to check whether the cervix was effaced or dilated and would check for the presenting part. He testified that this educates the patient and allows him to proceed appropriately.

Dr. X was particularly critical of Dr. Chung's practice of repeated breast and pelvic examinations in early pregnancy. She testified that the standard of practice in Ontario is to conduct a single complete physical examination in the first three months of pregnancy, with breast examination, pelvic examination, pap smear and screening for sexually transmitted diseases. Dr. Chung stated his view that this was only a minimal standard.

The Committee accepted the evidence of Dr. X and finds that the standard of practice of the profession is that normally a single complete examination is conducted in the first trimester of pregnancy. With respect to examinations during other stages of pregnancy, the Committee will address this below with respect to individual patients.

Prescription of Oral Contraceptives

Dr. X's evidence was that a competent family physician would reasonably be expected to prescribe an initial quantity of birth control pills that provides the patient a reasonable "trial" in order to assess tolerability, and this is widely understood to be three months. Thereafter, her opinion was that once patients are established on birth control pills, an amount should be prescribed that lasts until their next relevant preventative health screening, typically a pap test, which she indicated was widely understood to be needed yearly.

Dr. X was critical of Dr. Chung's practice of prescribing birth control pills repeatedly for only three-month intervals (or less), which required the patient to return to see Dr. Chung to renew the prescription. Dr. X testified that after the first three months, a prescription for twelve months or more is usual and is often timed for the need to repeat a pap smear. Dr. X testified there is no sound rationale to recall women every three months and that to repeat the examinations is well outside the usual standard of practice.

Dr. Chung testified that, as with any other medication, he usually prescribed oral contraceptives for three months at a time. He testified that he wanted to keep track and to know whether his patients were having problems. In general, when they returned to renew their prescriptions, he would perform a breast and pelvic examination. Smoking could be discussed and STDs could be checked. He testified that once on oral contraceptives, patients could abandon barriers and have unprotected sex, and he therefore would do tests for STD at the slightest complaint.

Dr. Chung testified that oral contraceptives were more effective to cycle and control irregular periods, but if patients refused, he would use cyclic progesterone to mimic the normal cycle. It was not ideal but the patient's choice.

The Committee was not persuaded that there is a clear universal standard of practice with respect to the length of prescriptions for oral contraceptives. The Committee agrees that in uncomplicated cases, the standard of practice articulated by Dr. X is applicable. However, it is unclear what standard of practice applies to complicated cases where one is dealing with unreliable, high-risk or non-compliant patients.

Fibroids

Dr. Chung testified that when he recorded fibroids or R/O fibroids [rule out fibroids] as his impression, this was a reminder to himself to think about this in future. It signified a uterus which was irregular or enlarged and irregular. He would not necessarily mention anything to the patient but would be alert to changes which might occur with pregnancy or oral contraceptives. He would only confirm with ultrasound if he thought he felt something measurable (> 2 cm). He does not use ultrasound as a diagnostic tool for fibroids but rather for monitoring.

Dr. X was critical of the fact that Dr. Chung did not use ultrasound to confirm the presence of fibroids when suspected, but rather subjected his patients to repeated internal examinations to check on suspected fibroids. She was also critical of his practice of following-up, at close intervals, on such a diagnosis in young women who had no symptoms. In her opinion, a competent family physician would reasonably be expected to utilize appropriate diagnostic tests (in this case ultrasound) when disease states are suspected. Her opinion was that Dr. Chung had failed to maintain this standard of practice by repeatedly subjecting his patients to pelvic examinations to follow suspected fibroids instead of sending his patients for ultrasounds.

The Committee was not persuaded that there is a clear standard of practice regarding the monitoring of patients with irregular or enlarged uterii for the potential of fibroids. The

Committee is also of the view that whether an ultrasound scan is required to make a diagnosis depends on the relevance of the finding. The Committee finds that Dr. Chung's evidence with respect to why he does not attempt to confirm the presence of small fibroids by use of ultrasound to be reasonable. Given the nature of his practice, the Committee was persuaded that he has experience in assessing fibroids through manual examination.

Tests for Cure

Dr. X was of the opinion that in a number of cases, Dr. Chung performed tests for cure for bacterial vaginosis or yeast infections that were not medically necessary. It was Dr. X's opinion that once this condition had been appropriately diagnosed and treated, it was not necessary to perform another pelvic examination in order to test that the treatment had been effective.

Dr. Chung was questioned on the need to conduct pelvic examinations for proof of the clearing of bacterial vaginosis or yeast infections. He agreed that this was not indicated unless the patient was bothered by odour or discharge. In high risk patients, however, he testified that he asks patients to return to recheck for STDs and he believes this is necessary. The Committee deferred to Dr. Chung's judgment with respect to whether or not it was appropriate to conduct follow-up examinations in patients with a high risk for STDs. These were not examinations to test for cure of bacterial vaginosis or yeast infections.

General Comments

The Committee was faced with evidence of a spectrum of examinations performed by Dr. Chung which varied from routine care to those which were clearly unjustifiably zealous.

The Committee determined that there were three broad categories as follows:

(i) Routine, thorough and comprehensive examinations;

(ii) Overly diligent care, reflecting poor judgment but which did not satisfy the test for a finding of a failure to maintain the standard of practice (for example, follow up of suspected fibroids, short prescriptions of oral contraceptives, minimal indications for intrusive examinations); and

(iii) Unjustifiable, inappropriate and unnecessarily aggressive examinations. The Committee concluded that such care constituted clear, cogent and convincing evidence of a failure to maintain the standard of practice of the profession. In most cases, the Committee further found this to be unprofessional conduct. Such examinations exceeded any reasonable limitations and demonstrated a lack of respect for patient dignity and privacy (for example, performance of repeated examinations in the first trimester of pregnancy to assess fetal growth, repeated vaginal examinations in virginal females and repeated rectovaginal examinations without indication).

In some areas, it appeared to the Committee that Dr. X made no allowance for practice variability, to the point of being unrealistic. As an example, Dr. X opined that Dr. Chung failed to meet the standard of practice by performing a follow up pelvic examination for a vaginal infection (non STD) which was unnecessary. It appeared to the Committee that while normally not required, there may be circumstances when such an examination may be prudent in the judgment of the physician. A further example is her position that Dr. Chung acted inappropriately by converting a complaint to a general assessment (including a breast and pelvic examination). Such actions are usually undertaken to expedite care where the physician has time to complete the assessment.

The Committee sought to be fair, recognizing that Dr. X made her determinations principally upon a review of complex medical records of care over many years. In some cases, the Committee did not agree with Dr. X's conclusion and felt she applied standards in too rigid a fashion. Dr. X repeatedly opined that intimate examinations should only be done if absolutely required to formulate a diagnosis or a treatment plan. The Committee could envision circumstances where other factors need to be considered (patients concerns, patient need for reassurance, family history and equivocal signs or symptoms).

It was clear that Dr. Chung's patients did not suffer from missed diagnoses; rather, the price they paid was over diligent care in the form of excessively frequent examinations.

Taking all of the above under consideration, the Committee recognized that there were clear examples of failure to maintain the standard of practice in Dr. Chung's practice in his approach to early pregnancy, examinations of virginal females and in his repeated use of rectovaginal examinations, all of which will be discussed below. In other areas, the Committee was not satisfied that the standard of practice of the profession was clear or that it should be interpreted as rigidly as was the opinion of Dr. X, without acknowledging the variations which exist in practice and the judgment calls required of physicians.

ANALYSIS

Part 1: The Ms A Case (Patient #1)

Facts not in dispute

Ms A became a regular patient of Dr. Chung in 1987, when she was 15 years old. She attended Dr. Chung's office with her mother, and at her mother`s suggestion, with a complaint of problems with her menstrual periods. On that visit, Dr. Chung completed a full examination, including a digital vaginal examination and a breast examination in the presence of her mother. Dr. Chung prescribed Provera for Ms A in an effort to help regulate her cycle. Ms A was disinclined to take oral contraceptives for personal reasons. Dr. Chung subsequently saw Ms A on numerous occasions as documented in her medical record for follow up. On most occasions, a digital vaginal examination was performed as was a breast examination. Dr. Chung varied the dose of her Provera and added Premarin at a later date due to continued menstrual irregularity. Ms A last attended Dr. Chung's office in 1991.

Ms A brought her complaint regarding the care she received from Dr. Chung to the College in January 2010.

The Committee received in evidence the detailed medical record of Ms A. The Committee accepted this record as reflecting the services provided.

Testimony

Ms A

Ms A testified that she has known Dr. Chung all her life. She testified that in her culture, sexual content and conversation is frowned upon. This was the case in her family as well.

As a pre-teen, she saw Dr. Chung for skin and allergy problems. At age 15, she began seeing him for menstrual issues. Her mother accompanied her on her first visit, as described above, but did not attend with her thereafter. Her mother was with her all the time during this first visit, the curtain was pulled and Dr. Chung asked for permission to examine her. She testified in chief that she removed all her clothing from the waist down for the examination. On cross examination, she testified she recalled being naked for the examination, but when she was asked directly if she may have been given a gown, she replied “may have”.

Ms A testified she returned at monthly intervals and had medication trials. She described these visits as routine, always following the same process. She testified that 90% of the time Dr. Chung did a breast and pelvic examination.

She agreed in cross examination that Dr. Chung had recommended oral contraceptives for her menstrual irregularity but that she did not want them as she was influenced by the church.

She testified that during breast examinations, her bra would be removed and her t-shirt pulled up. She testified she had no cover. She did not understand why she was having breast examinations other than on one occasion when Dr. Chung said he palpated something in her right breast.

On one occasion, when she went to his office for another reason, he asked about her menstrual periods and then asked to take a look which she agreed to, after he insisted.

She had just had a pelvic examination done a month before and she thought it a bit strange and that something was not right.

She testified that he did a rectal examination after he told her he felt hard things in her abdomen. She felt awkward, embarrassed and uncomfortable. On other occasions, he did not clearly explain why, he would just go ahead and perform a rectal examination.

She confirmed the plan of Dr. Chung's office and stated that he sat at his desk with his back to her while she undressed. She testified there was a curtain but other than the first time, it was never pulled completely. In cross examination, she said it was pulled maybe a foot or two. She testified there was no cover and she did not ask for one as she was naïve and did not know the proper procedure.

Ms A testified that Dr. Chung assisted her in dressing on two occasions. She was trying to fasten her bra after a breast examination and having difficulty. He offered to help but she was able to do it. She testified that she did not know that it was not appropriate but she felt that it should not have happened. On another occasion, Dr. Chung assisted her in removing her underwear. She was shy and it made her feel awkward but she did not question his authority as he was a doctor and a deacon and looked highly upon.

Ms A testified that on one occasion after washing his hands, he touched the lateral part of her right thigh, softly with the outside of his finger. This was where she had a scar which was self-inflicted. She was embarrassed and admitted to difficulties at that time - she was 17 or 18. He did not refer her to a mental health specialist but just said not to do it again. This touching of her scar made her feel strange and she described it as another flag indicating something was not right.

Ms A testified that it was when she attended the university medical clinic in 1990, while in her second year of university, and was given a sheet and the doctor left the room while she undressed that she realized what happened with Dr. Chung was not right. At university, she was seen at the clinic every three, four or five months. She was "shocked" when she saw Dr. Chung's medical records which showed she had ten breast and pelvic

examinations in twelve months. She questioned why and testified she was appalled and felt victimized. She was a virgin at the time. She decided never to see Dr. Chung again.

She did, however, return to Dr. Chung for follow-up of a yeast infection after she had a swab done at the university. She was given a prescription but told to await results before starting the medication. She filled the prescription and was embarrassed to return. She agreed that she saw Dr. Chung on a number of occasions in 1989, 1990, 1991, for a variety of complaints. She agreed some of these visits were self-initiated.

In 2009, after the birth of her son and while she was suffering postpartum depression, she decided to make a complaint to the College. She had psychological counseling and the issue of being "hurt by a doctor in the past came up". She was encouraged to say something to the College for herself and others. She testified that she did not report earlier because she did not want to shame her father or create strife between her family and the church. After her father died five years ago and her mother left the church, she came forward.

Ms A testified that her experience with Dr. Chung crops up at times of stress or personal conflict and has contributed to her psychological status. She has always been depressed. In regard to boyfriends, Ms A testified she allowed more touching than normal as she was used to it already.

Ms A testified that she felt Dr. Chung was a good doctor medically, recommending medication and doing investigations such as blood work and ultrasound.

Ms A also testified that Dr. Chung did not watch her dress or undress. Ms A agreed that the breast examinations Dr. Chung performed were normal and the same as other doctors. There was no fondling or sexual comment. She agreed that there was no sexualization of pelvic examinations, no sexual comment, no attempt to stimulate her, or evidence of sexual fantasy. She testified that Dr. Chung always wore gloves.

Ms A agreed in cross examination that her mother and sister had been angry/hurt and upset with the Chungs. Ms A was aware of this though not directly involved.

Ms A was emotional at times during her testimony but addressed questions posed in a direct manner. Her evidence was for the most part consistent with her medical record. The Committee noted some animus towards Dr. Chung. The Committee accepted, however, that Ms A gave a truthful description of her interaction with Dr. Chung. The inconsistencies in her evidence about whether she was completely naked or naked from the waist down on her first visit (when her mother was present) were noted but did not change the Committee's impression that she was a credible witness.

Dr. Chung

Dr. Chung testified as to his medical background, teaching and the nature of his practice. These aspects will be considered in more detail later in the reasons. His evidence in respect to Ms A follows.

Dr. Chung testified that he knew Ms A all her life. He provided her episodic care while she was a child until she was 15 years old.

At the time of her first visit, on a date in 1987, Ms A came with her mother. She had a complaint of irregular vaginal bleeding and spotting all the time. Given this, even though she was virginal, a pelvic examination was performed as was a breast examination. He used only one finger for the vaginal examination and noted a retroverted and retroflexed uterus. She was offered oral contraceptives but quickly declined. His diagnosis was menstrual disorder and anovulation. A decision was made to cycle her bleeding with Provera and see how she would do.

When next seen on a date in the following month of 1987, she was spotting post period and he re-examined her, noting no change in uterine size. When questioned about why he examined her again, he responded that it was his training, routine in his practice and that it was due diligence so that nothing was missed (such as a hormone producing ovarian cyst or a uterine reason, even though the chance was small). She was sent for a number of blood tests. Thereafter, she was seen approximately monthly. During that time her dose of Provera was adjusted and Premarin was added. Breast tenderness was noted consistent with mild fibrocystic changes. At these visits, both breast and vaginal examinations were

repeated. In a month in 1988, he again brought up oral contraceptives and she refused again, even though the current management was not as effective.

Dr. Chung testified that the rectovaginal examinations done on Ms A on a date in 1987, and twice in a month in 1988, were done because he suspected something at the back of the uterus, likely a piece of stool that he wanted to double check. The Committee notes that no such reason was stated in his medical records. He testified that he tells the patient and then proceeds. He testified that he watches for discomfort but that he approaches this type of examination as he would an examination of any body cavity, such as a mouth, but in a different location.

Dr. Chung testified that on one occasion, he offered to assist her when she was struggling to do up her bra. She said no. He did not touch her and felt stupid in trying to be too helpful. He was embarrassed and acknowledged it was not a good idea. Dr. Chung testified that this was not usual for a doctor to do and agreed it was unprofessional.

Dr. Chung testified that on another occasion, he assisted Ms A in removing her underwear. She was lying on the examination table and had forgotten to remove her underwear which was down below her knees. He helped her from the knee down and then hung her underwear up. After the examination, he handed it back to her. He admitted he was too eager to help but he was conscious of the time and that his waiting room was full. In hindsight, he agreed that this was unprofessional.

Dr. Chung testified that the curtain was not always drawn for Ms A after the first visit. He left it up to her to draw while he was at his desk with his back to her making notes. He testified that he never watched her dress or undress and the curtain made no difference. He testified that he provided a cover but that she did not use it. He thought she just lay on top of the drape, naked from the waist down and he just let it go. At the time, he did not think she was shy with him and presumed she did not think it was necessary. He did not agree with the evidence given by Ms A, when she said that she did not know what to do. He believed that most patients knew what to do with the cover.

Ms A was seen on a date in 1990, when she presented with a cough. She had been treated for possible pneumonia and was improving. A full general assessment was carried out, including breast and pelvic examinations, as she had not been seen for a year. On this occasion, he noted multiple parallel scars on her right lateral thigh. He touched the scars, recognized they were self-inflicted and asked to see her left forearm where more were seen. He asked if they hurt and she seemed embarrassed and gave him an excuse. The touch was in part sympathetic and in part to see if the scars were painful. He recalled this being a shock to him and he did not pursue it as it was outside his expertise and she did not come to him for psychiatric issues.

In cross examination, Dr. Chung agreed there is a power imbalance in the doctor-patient relationship. He also agreed that there needs to be heightened sensitivity when examining sexual organs. He agreed maintaining privacy and minimizing discomfort were important and that examinations should be done only if medically necessary. He noted, however, that as part of his training a gynaecological assessment was part of a general assessment and he treated it as he would a chest examination or blood pressure. At the time, he considered breast examination to be a part of a gynaecological assessment. While he still holds this opinion, he now is more careful to explain to patients the reason why and leaves it up to them whether to proceed. In a specific assessment, if it does not contribute to the diagnosis, he agreed a breast examination should not be done.

He agreed that teenage patients may be inexperienced and anatomically virginal and that parents trusted him. Ms A was virginal but pelvic examination was done to ensure no structural problem, though he agreed that the likelihood was that the issue was hormonal.

Dr. Chung testified that Ms A misunderstood in believing there was an invasion of her privacy. She was coming to see him for ongoing gynaecological issues and a pelvic examination would be expected. His intention was to do his job as thoroughly as possible, exercising due diligence. He described this as defensive medicine, treating every complaint as something new, so as not to miss anything. This was in his mind a way to reassure himself and the patient. He testified that she did not indicate to him privacy

concerns, or object to any examinations. He also said he caused no pain or distress and did his best to ensure her comfort.

Dr. Chung was taken through Ms A's, visits addressing the reason for repeated breast and pelvic examinations. Dr. Chung agreed that he had identified no structural problem and that the patient had a hormonal issue. The patient had ongoing symptoms and therefore he would re-examine her. While acknowledging that irregular periods and spotting are not unusual for patients of that age, he felt that due diligence required him to revisit - to be sure he did not miss anything. He testified that he performed gynaecological assessments as this related to her current symptoms. At that time, he coupled breast examinations with pelvic examinations. Today, in hindsight, he thought he would reduce the number of examinations. On some occasions, such as on a date in August 1987, she returned with complaints of vaginal soreness and itching. If sore breasts were noted, this also would be followed up. He testified that this could be related to hormones and cause concern to the patient but not usually to him. Examinations in that case were performed in part for reassuring the patient. Visits continued at approximate monthly intervals, which included breast and pelvic examinations, the purpose being to ensure that he had not missed anything. He noted that a number of times Ms A attended on her own initiative. In a month in 1988, he added Premarin to decrease spotting. He agreed that between April 1987, and June 1989, a total of 18 breast and pelvic examinations were performed. He agreed that today he would reduce the number of examinations but he believed they were necessary at the time. He did not recall Ms A ever questioning whether the pelvic examination was necessary.

(i) Did Dr. Chung fail to maintain the standard of practice of the profession with respect to his care and treatment of Ms A?

The Committee finds that Dr. Chung failed to maintain the standard of practice of the profession in his care and treatment of Ms A by performing vaginal examinations repeatedly at a time when she was virginal, and by repeated unnecessary rectovaginal examinations.

Dr. X testified that having ascertained that there was no structural abnormality at the initial examination in 1987, there was no clinical need to perform repeated breast and pelvic examinations on certain dates in April, May, June, August, November, December 1987; on certain dates in January, March, April (2 dates), June (2 dates), July, September 1988; and on a date in June 1989; and a date in May 1990.

Dr. X notes that on two occasions (dates in 1988), the patient was examined while menstruating. Her evidence was that pelvic examinations are not usually done at such times in respect of patient dignity.

Dr. X also notes in her report with respect to a rectovaginal examination performed on two dates in September 1988, that such examinations are not usually done except where clearly necessary, as they are unnecessarily uncomfortable.

Dr. X opined that Dr. Chung's care of Ms A failed to maintain the standard of practice. He performed intimate examinations that were not clinically indicated. These examinations did not add to the diagnosis or to the management of the patient, and she had no factors to warrant such care. The Committee agrees.

Dr. X opined that Dr. Chung did not respect his patient's virginal status or the emotional impact of such frequent vaginal examinations. It was Dr. X's view that Dr. Chung was insufficiently sensitive in carrying out intimate examinations frequently and that he did not respect the patient's dignity and comfort by so doing. Again, the Committee agrees with Dr. X's opinion.

Aside from monitoring the hormone (Provera) given and noting that there were a number of occasions when she presented herself, Dr. Chung gave the Committee no satisfactory reasons for such a high number of breast and pelvic examinations in such a short period (18 breast and pelvic examinations from April 1987 to June 1989).

The Committee concluded that whether the visit was generated by the patient or by Dr. Chung, it was Dr. Chung's responsibility given the circumstances at the time to decide what, if any, intimate examinations should be performed.

It was not apparent that Dr. Chung gave any consideration to the intimate nature of the examinations; rather he mechanically performed excessive examinations when he should have considered their necessity. Ms A clearly had a functional, hormonal problem and on no occasion did Dr. Chung identify a structural cause for the symptoms she had.

In performing the number of examinations he did, he subjected this virginal patient to unjustified discomfort and did not respect the dignity which she deserved. The additional "recheck" of a rectovaginal examination and repeated examinations while the patient was menstruating support the unthinking and mechanical nature of his approach.

(ii) Did Dr. Chung engage in sexual impropriety with Ms A?

The College asks the Committee to make a finding of sexual impropriety based on a violation of this patient's privacy and integrity resulting from numerous unnecessary breast and pelvic examinations. The College argues that although there is no evidence that the clinical examinations included touching outside the spectrum of a typical examination, they were unnecessary. The College argues that Dr. Chung betrayed his patient's trust and did not act in her best interest. The College asks the Committee to find that Dr. Chung was driven by his own sexual intent based on all the circumstances.

Dr. Chung denies that he engaged in sexual impropriety with respect to Ms A. Dr. Chung's position is that there is no clear, cogent or convincing evidence that he engaged in any touching or behaviour of a sexual nature in the care he provided to Ms A. Dr. Chung relies on Ms A's own testimony that examinations were carried out in an appropriate clinical fashion consistent with the examinations conducted by other physicians.

Given that the allegation with respect to sexual misconduct in this case pre-dates the coming into force of the RHPA**,** the applicable legislation is the HDA. As discussed above, "sexual impropriety" is not specifically defined in the HDA. The Committee's view, however, is that "sexual impropriety", implies conduct of a sexual nature. Although the RHPA was not in force at the applicable time, the Committee notes that section 4 of the Code states that:

> *Sexual nature does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.*

The Committee finds that this is a general principle that should apply equally to determining whether or not a physician engaged in sexual impropriety under the HDA.

The Committee considered the Supreme Court of Canada decision in *R. v. Chase*, [1987], S.C.J. No. 57 which dealt with the criminal offence of sexual assault. In that case, the Court also had to determine whether the conduct at issue was of a sexual nature. In that case, the Court stated the following:

> Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer. The part of the body touched, the nature of the contact, the situation in which it occurred, the words or gestures accompanying the act, and all other circumstances surrounding the conduct, including threats which may or may not be accompanied by force, will be relevant. The intent or purpose of the person committing the act, to the extent this may appear from the evidence, may also be a factor in considering whether the conduct is sexual. If the motive of the accused is sexual gratification, to the extent that this may appear from the evidence, it may be a factor in determining whether the conduct is sexual.

In *R v. K.B.V.*, 1993¸ S.C.J. No. 78, the Court found that it is not necessary to prove intent of a sexual purpose or sexual gratification to make a finding of sexual impropriety or sexual abuse. The Court found that it is the violation of the sexual integrity of the victim, as objectively viewed, which is important.

In assessing whether or not there has been sexual abuse or impropriety, the Committee also had regard to the power imbalance between a physician and patient, and the responsibility of the physician to act in the best interests of his patient. In considering this issue, the Committee was guided by the Supreme Court of Canada decision in *R v. Litchfield*, [1993] 4 S.C.R. No. 127, where the Court stated at para. 52:

> […] the Crown did not have to submit evidence proving that the procedures were not appropriate or necessary for diagnostic or treatment purposes. What the Crown had to lead was evidence that the conduct of the respondent had a sexual character in addition to whatever medical character that conduct might have had.

The Committee concludes that the fact that a medical procedure is not medically indicated does not necessarily mean that there has been sexual impropriety or abuse. The Committee's view is that, whether or not the examination is medically indicated, the conduct at issue must be of a sexual character or nature for there to have been sexual impropriety or abuse.

The Committee also considered the decision of this committee in the case of *Im (Re)*, [1993] O.P.S.D. No 3. The conduct (unnecessary breast, vaginal and rectal examination) in that case was similar to the allegations against Dr. Chung. In *Im*, however, there had been a criminal prosecution for sexual assault, during which the accused changed his plea to guilty during the course of his cross examination. In his reasons for sentencing, reported at [1992], O.J. No. 4170, Justice Salhany comments at paragraph 26 that he regarded the case as an unusual one. The Court found that there was no evidence of premeditation by the accused, no indication of sexual gratification, no fondling or caressing, no request for sexual favours, nothing to suggest that Dr. Im used his professional status to prey upon helpless females who came to him for help. In other words, there was no evidence of a sexual intent or purpose. The Court went on to say that the evidence indicated that Dr. Im's examinations were often mechanical and the product of disorganized thinking and tortured medical logic. The Committee in this case, as will

be described below, concluded that Dr. Chung's examinations were also often mechanical. In the *Im* case, there was a criminal finding of sexual assault. Passing of sentence was suspended, and probation and terms ordered.

Dr. Im then appeared before this College's Disciplinary Committee and admitted that he had been found guilty of a criminal offence relevant to his suitability to practise medicine and that he was incompetent. There was no allegation of sexual abuse or sexual impropriety or that Dr. Im had failed to maintain the standards of the profession. The case proceeded on an agreed statement of facts and joint proposal for penalty.

This Committee concluded after reviewing the *Im* case, that while the conduct bore some similarity to the allegations against Dr. Chung, the circumstances were different. In Dr. Im's case, there was a guilty plea in the criminal proceedings, and the case proceeded before the Discipline Committee based on incompetence and the fact that Dr. Im had been found guilty of a criminal offence relevant to his suitability to practice medicine. The College did not ask for a finding of professional misconduct based on sexual abuse or sexual impropriety in the *Im* case, and no guidance was provided by the Committee in the reasons on determining whether or not the conduct was of a "sexual nature". This Committee also recognized in the *Im* case that there appeared to be a number of significant personal and mental health factors which contributed to the criminal conviction. Furthermore, Dr. Im had a walk-in practice with no ongoing relationship with his patients. Dr. Chung, on the other hand, had a gynaecological/obstetrics practice with longstanding patients, many of whom were at high risk. One would expect to see more examinations of an intimate nature in Dr. Chung's practice than Dr. Im's practice.

In other cases before the Discipline Committee, findings of professional misconduct on the basis of sexual impropriety or sexual abuse often include behavioural components such as fondling, remarks or acts with sexual connotation or overt sexual acts [for example, *Karkanis (Re)* [2013] O.C.P.S.D. No. 10 and *Sazant v. College of Physicians and Surgeons of Ontario* [2012] O.J. No. 5076.].

In bringing this body of law to bear on the case at issue, the Committee determined that it must:

> (1) on an examination of all of the surrounding circumstances, determine whether the conduct at issue was of a sexualized character or nature;
>
> (2) recognize that sexual intent or purpose can be a factor in determining whether or not the conduct was of a sexual character or nature, but sexual intent or purpose is not a prerequisite to a finding that the conduct was of a sexual character or nature;
>
> (3) recognize that sexual nature does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided, and
>
> (4) recognize that even if an examination is not medically indicated, it does not necessarily mean that the conduct was of a sexualized character or nature.

While Dr. Chung knew Ms A outside his practice, the events at issue all occurred in Dr. Chung's examination room in his medical office. The office design was such that the room was divided by a privacy curtain which could be drawn to ensure patient privacy while dressing or undressing. Dr. Chung's desk was against one wall, the examination table was on the opposite wall, separated by an overhead curtain when it was drawn. The Committee accepted that the description above accurately represents the set-up of Dr. Chung's office. It is consistent with the diagram provided by Ms A and the description given by Dr. Chung.

Ms A said she had no cover (drape). The Committee, however, finds that a cover was a basic component of the office set-up and that a cover was available to Ms A. Other patients whose evidence is cited later in the reasons gave evidence that a drape or cover was provided. Mrs. M testified that her duties included ordering supplies, which included drapes, examination paper swabs, etc. The Committee concluded that the cover was folded on the examination table, and Ms A being shy and naïve either did not notice it or did not know what it was for. The Committee does not find that failing to draw the curtain for Ms A or direct her attention to the cover constitutes sexual impropriety. The Committee will have more to say with respect to preserving the patient's privacy below

in its discussion of the allegations of disgraceful, dishonourable or unprofessional conduct.

Dr. Chung's extensive and apparently thorough charting documents repeated breast and pelvic examinations recorded at most but not all of Ms A's visits. The Committee accepts this medical record as accurately representing the service provided on the dates noted. That pelvic and breast examinations were performed at most visits is not disputed. The College alleges that based on the frequency and intimate nature of these examinations, and having regard to the evidence as to whether or not the examinations were medically necessary, the examinations were of a sexual nature. The College asks the Committee to infer a sexual intent on the basis that Dr. Chung performed examination of sexual or private parts repeatedly which were not medically warranted and these examinations were not in his patient's best interest.

Dr. Chung was carefully taken through all of the patient visits and given the opportunity to explain his reasons for doing the examinations he did. His justifications included: continued complaints of irregular vaginal bleeding/spotting, monitoring the effect of hormone therapy, breast tenderness, cystic breast lumps, new vaginal soreness and itching, following up on treatment prescribed, modification of hormone therapy, and need for patient reassurance.

While some of these examinations appear to be medically indicated, the Committee concluded that a significant number of these examinations were not. Dr. Chung's practice of double checking appeared to reflect automatic or routine conduct without stopping to think whether or not the examination was necessary or appropriate in the particular circumstances, or whether the information he sought to acquire or confirm could be acquired through less invasive means. While Dr. Chung has indicated he believed these examinations were all medically indicated, he also agreed that, in future, he would do less. This suggests to the Committee that Dr. Chung now recognizes that a more thoughtful assessment of whether such examinations are warranted was required.

Ms A testified that it was while at university that she realized there was something wrong in the way that she had been treated by Dr. Chung, yet she returned to see him for various

reasons after that point and did have a further gynaecological examination by Dr. Chung. The Committee concluded that while noting different approaches, Ms A still thought at that time that Dr. Chung provided reasonable care. It would appear that Ms A's shock and dismay followed a review of her own medical records, and an appreciation of the number and frequency of intimate examinations that had been performed. The Committee can understand why, on the face of it, Ms A developed a concern that she had been violated.

Whether or not Ms A was influenced by others to report Dr. Chung to the College was not relevant as the Committee found her to be sincere in her testimony. The Committee did not find that Ms A's testimony was motivated by any sense of revenge based on the Chung family's interaction with Ms A's family. As indicated above, the Committee understands how Ms A, in looking back on the number and frequency of examinations, could reach the conclusions that she did. It is not surprising that Dr. Chung's practice of conducting such intimate examinations as a matter of routine eventually gave rise to a misinterpretation by his patient as to the nature of these examinations.

Excessive examinations were performed on this virginal patient. They were performed inappropriately, in that they were done more frequently than was reasonably justified. Dr. Chung displayed a lack of insight and a frozen attitude towards societal change that had seemingly passed him by. As discussed above, the Committee finds that this was a failure to maintain the standard of practice of the profession. The Committee does not find, however, that Dr. Chung's examinations of Ms A had a sexual character or nature and notes the following:

- All examinations occurred in the clinical setting;
- There was no evidence that the clinical examinations performed included touching outside of the spectrum of a typical clinical examination (Ms A's description of the clinical examinations conducted by Dr. Chung was consistent with her description of the clinical examinations conducted by other physicians);
- There was no evidence of fondling, lingering, caressing or attempts at stimulation;

- There were no requests for sexual favours or comments of a sexual nature;
- There were no sexual gestures or threats or coercion; and
- Although not a prerequisite to a finding, there was no evidence of sexual intent or gratification on behalf or Dr. Chung.

The Committee concludes that Dr. Chung's examinations of Ms A were conducted for medical purposes. Dr. Chung was misguided with respect to the medical necessity of conducting all of these examinations (as discussed above), but the Committee is satisfied, based on all of the evidence, that the examinations did not have a sexual character and were not of a sexual nature. As a consequence, the Committee did not find that the College proved on a balance of probabilities that Dr. Chung had engaged in sexual impropriety with respect to Ms A.

(iii) Did Dr. Chung engage in disgraceful, dishonourable or unprofessional conduct in regard to Ms A?

Dr. Chung's conduct in this case is disturbing and unacceptable. There was no consideration of Ms A's privacy or how she might feel about having to submit to frequent examinations. While Dr. Chung agreed there is a power imbalance in the physician/patient relationship and a need for sensitivity in performing examinations of sexual organs, he nevertheless disregarded these concepts. He demonstrated instead a clear lack of awareness**.**

The Committee found aspects of Dr. Chung's care of Ms A particularly troubling. These include the monthly vaginal examinations of Ms A at a time when she was not sexually active. In addition, there was seemingly mechanical thoroughness in the routine performance of unnecessary examinations without any consideration as to the intrusive nature of these examinations or any explanation to the patient. Such behaviour challenges any justification on clinical grounds, and reasonably could give rise to an impression by a patient that the examination was motivated by an improper purpose. It is disrespectful of a patient's dignity and privacy to conduct pelvic and breast examinations repeatedly

without regard to the sensitive nature of such examinations. As described above, it can also clearly lead a patient to question the true nature of the examination, causing the patient great stress and upset.

The Committee finds the behaviour described above was unprofessional. In making this finding, the Committee considered the following:

- Dr. Chung maintained an office gynaecological/obstetric practice at the time. He was one of the only Chinese speaking doctors offering such services. That many patients came to him for these reasons and that a gynaecological assessment could be reasonably anticipated did not, in the Committee's view, relieve him of making a thoughtful decision on whether a pelvic or breast examination was needed. He believed that they were needed, but his view was not based on sound principle and was mechanical and without regard for the patient;

- Dr. Chung's description of his training and emphasis on the due diligence he exercised in his practice led the Committee to accept that Dr. Chung adhered to a medical model with a disease oriented approach. The Committee was of the view, however, that Dr. Chung did not accord the requisite sensitivity to intimate examinations. This is clear in his evidence in which he likens the examination of an oral cavity to that of an anal cavity. It was the Committee's view that this illustrates an insensitivity, disrespect and thoughtlessness which is unprofessional;

- Dr. Chung's clinical notes do not clearly reflect whether particular follow-up appointments were generated by the patient (i.e. because of various concerns including continued spotting) or directed by him. There were certainly some visits that were patient instigated. The degree to which patient reassurance was in part the reason for further examinations is not clear. Reassurance, however, does not necessarily require repeat intrusive examination; and

- The Committee was deeply concerned by Dr. Chung's suggestion that his patient was responsible for failing to bring her concerns or questions to his attention,

> even though he acknowledged the power differential between them and the exceptional role he had as an authority figure.

In conducting frequent and unnecessary intimate examinations on Ms A, Dr. Chung displayed thoughtlessness, disrespect and a lack of sensitivity. From Ms A's testimony, it is clear the impact on her subsequent life has been significant. Unwarranted medicalization of normal physiological variations about menarche had significant consequences on this patient. For these reasons, the Committee finds Dr. Chung's conduct to be unprofessional.

Additional Privacy Issues

The Committee accepts that when Ms A was examined, she did not use a drape. As stated earlier, the Committee finds that a drape was available to the patient in the examination room. The issue, however, is not whether one was available. It was the professional responsibility of Dr. Chung to ensure that it was appropriately used. To say that the patient has responsibility for using the drape or pulling the curtain is simply unacceptable. The Committee finds that it was unprofessional for Dr. Chung to delegate this task to a vulnerable patient.

Dr. Chung also admitted to trying to assist Ms A with her bra and underwear. Assisting patients with their clothing is not appropriate in most circumstances. Ms A was fully capable of dressing and undressing herself, as admitted by Dr. Chung. The Committee finds this to be unprofessional conduct, as admitted by Dr. Chung.

Examination of the Scar

There was dispute between the parties regarding the facts in respect of the examination of the scar on Ms A's thigh. Dr. Chung agreed to touching the scar, in part to see if it was tender and as a gesture of sympathy. Ms A implied a sexual touch. The Committee finds nothing sexualized or improper about the examination performed. Dr. Chung did not need to touch the scar to know what it was; however, it was not wrong to touch the scar for the reasons he cited. Ms A's embarrassment over the self-cutting episodes was clear, as was Dr. Chung's discomfort in dealing with the issue of self-cutting. Ms A's interpretation

was an unintended consequence of a therapeutic touch gone awry. The Committee does not find that Dr. Chung's examination of the scar constitutes sexual impropriety or disgraceful, dishonourable or unprofessional conduct.

Part 2: The Section 75 Patients

The Committee considered the medical records of each of the nineteen patients noted in the allegations, the oral evidence of the four patients who testified, the evidence of Dr. X and the testimony of Dr. Chung.

(i) Did Dr. Chung fail to maintain the standard of practice of the profession in his care and treatment of any of the nineteen section 75 patients or engage in disgraceful, dishonourable or unprofessional conduct with respect to any of these patients?

Position of the Parties

The College submitted the Committee find that Dr. Chung failed to maintain the standard of practice of the profession in his care and treatment of each of the nineteen section 75 patients. The College further asks the Committee to make a finding that Dr. Chung engaged in disgraceful, dishonourable or unprofessional conduct with respect to each of these patients. Dr. Chung denies these allegations.

Patient #2

The Committee was not persuaded that Dr. Chung's care of Patient 2 constituted a failure to maintain the standard of practice of the profession or disgraceful, dishonourable or unprofessional conduct.

This patient testified at the hearing. She was a patient of Dr. Chung from birth until 2 years ago.

She testified that she changed in the examination room behind the curtain, and that the curtain was always closed. She had a paper sheet to cover herself. When weighed, she

was dressed except for her shoes. She testified that she would just undo her bra for breast examinations.

She testified that pelvic examinations were done every one to three years, and she did not ask why they were needed. On one occasion, she told Dr. Chung she was on her period to avoid an examination. She testified that he “called her on it” and she ended up having the examination. She saw him more often while on oral contraceptives. She was given samples and prescriptions lasting three or four months. She did not recall being asked to return for examination of fibroids and had no ultrasound to detect fibroids.

Rectovaginal examinations were performed, but she did not know how many. She testified that Dr. Chung explained to her that these examinations were performed because her uterus was “pointing back”.

She never brought a friend to her appointments. She did not recall any offer to have a third party present during her examinations, but testified that she thought Dr. Chung had a sign in his office indicating that a third party could be present.

She testified that she had no breast issues and while she found breast examinations awkward, as far as she was concerned, they were routine.

She testified in cross examination that she was satisfied with her care, had no complaints and was comfortable with Dr. Chung. She found him thorough and professional. She confirmed that she had been diagnosed with an ovarian tumour as a child and had a blood disorder for which she was followed by hospital doctors.

She was clear in providing her testimony, which the Committee accepted as truthful and for the most part consistent with her medical record. The chart confirms that this patient had a complex history. She was at high risk for sexually transmitted disease. She was on oral contraceptives and a smoker attempting to quit. She also attended Dr. Chung for other issues.

Dr. X's opinion was that Dr. Chung did not maintain the standard of practice of the profession with respect to his care of this patient in several ways. In particular, it was her opinion that Dr. Chung conducted breast and pelvic examinations that were not absolutely required; conducted repeat pelvic exams to monitor potential fibroids instead of sending the patient for an ultrasound; prescribed oral contraceptives in unusually small quantities which necessitated frequent returns by the patient; failed to reserve the use of rectovaginal examinations to rare instances where tumour of the rectovaginal wall is suspected; and should have avoided using rectal or rectovaginal examinations to detail the exact anatomy of pelvic organs.

Dr. Chung testified that he was concerned because of this patient's risky sexual behaviour and history of a past ovarian tumour. He testified that contrary to Dr. X's evidence, there was no duplication of care, or unnecessary duplication of intimate examinations already performed at Hospital E**.**

The Committee accepted that there were legitimate reasons for Dr. Chung to consider this patient to be a high risk patient and to see and examine her at frequent intervals. The Committee was not convinced on a balance of probabilities that Dr. Chung failed to maintain the standard of practice of the profession with respect to his care of this patient. With such a complex and high risk patient, it is difficult to point to any one examination and conclude that it was unnecessary. With respect to the particular circumstances of this high risk patient, the Committee was prepared to defer to the judgment of the physician at the time with respect to the frequency and nature of the examinations conducted.

In the circumstance of this case, the Committee finds the allegation of failure to maintain the standard of practice of the profession in his practice of prescribing oral contraceptives not proved. This was a high risk patient and it was not unreasonable for Dr. Chung to monitor her closely by providing her with only short prescriptions.

With respect to the use of rectovaginal examinations, as the Committee has previously stated, we do not agree that the standard of practice is such that rectovaginal

examinations must be reserved for rare instances where tumour of the rectovaginal wall is suspected. In this particular case, the use of rectovaginal examination was to monitor the size and shape of this patient's irregular, enlarged and retroverted/retroflexed uterus. She also had a history of an ovarian tumour in childhood. While the frequency of examinations reflects overly diligent care, it does not constitute a failure to maintain the standard of practice. As previously stated, the Committee's view is that Dr. Chung was skilled at detecting fibroids through manual examination and consequently he did not fall below the standard of practice by failing to send the patient for an ultrasound.

The Committee was not persuaded that Dr. Chung engaged in disgraceful, dishonourable or unprofessional conduct with respect to this patient.

Patient #3

The Committee finds Dr. Chung failed to maintain the standard of practice of the profession in his care of this patient by conducting repeat vaginal examinations at a time when she was virginal and not experiencing any significant gynaecological problems. The Committee also makes a finding of unprofessional conduct with respect to Dr. Chung's care of this patient.

Even though she was not sexually active and a virgin, the record shows Dr. Chung attempted to examine this patient digitally on a date in 2008. Unable to do a satisfactory vaginal examination, he performed a rectal examination. Dr. Chung indicated that the reason for examination was that her mother had fibroids and that the patient was on oral contraceptives. The patient, however, was having no problems and had been placed on an oral contraceptive for acne. Vaginal examinations were repeated on three dates in 2009, four dates in 2010 and one date in early 2011. She was well from a gynaecological perspective during this time, aside from mild breakthrough spotting which is not unusual. She was not sexually active and no significant gynaecological abnormality was noted.

Dr. X testified this patient should have only required a pelvic examination for signs or symptoms of problems. Dr. X's evidence was that of the nine vaginal examinations done,

one was appropriate because the patient complained of vaginal discharge (a date in 2006) and another was appropriate because the patient complained of mid-cycle bleeding (the date in early 2011). In her opinion, all others were not medically necessary. In terms of the nature of the examinations, Dr. X did not understand why Dr. Chung attempted a digital vaginal examination (a date in 2008 and a date in 2009) on a patient who reported being virginal. She noted that opinion in the 1990s regarding whether a pap test should be done in a virginal patient was arguable.

Dr. X testified that Dr. Chung's care of this patient fell below the standard of practice of the profession. In particular, in her opinion a competent family physician would reasonably be expected to perform examinations of a sensitive nature only when absolutely required to formulate a diagnosis and/or treatment plan; and document the reason for examination, the counseling that occurred and the special care taken in the process of pelvic examination of virginal women.

Dr. Chung argued that breakthrough bleeding, an irregular but unchanging shape of the uterus, urinary symptoms (November 2011) and his need to confirm the absence of pathology required repeat examinations. The Committee does not agree, but it does accept that Dr. Chung conducted those examinations because of his misguided belief that they were necessary.

Small amounts of oral contraceptives were provided to this patient, requiring her to return, at which times both breast and pelvic examinations were carried out. Neither the need for further prescriptions for oral contraceptives nor a family history of fibroids in this virginal asymptomatic patient constitutes a legitimate reason, in the Committee's view, to conduct repeated pelvic examinations.

The Committee accepts that the number of pelvic examinations done (some at three month intervals) is far beyond what might reasonably be expected given the circumstances of this young virginal patient. This pattern of care suggests an unthinking or routine approach which lacked any consideration of the dignity and privacy owed this

young virginal woman. The Committee accepts that mild breakthrough bleeding is a common side effect of oral contraceptives and, having noted no physical abnormality, Dr. Chung had the option of simply reassuring her and adjusting her dose. The Committee also finds that the fibroids, which he suspected or wanted to be sure he did not overlook in future, would have been of no consequence in a patient of this age and was not a sufficient reason to justify repeated internal examinations of a virginal patient.

Dr. Chung's behaviour was carried out without sensitivity to the intimate nature of the examinations, confirmed by his own evidence in which he describes this type of examination as not anything special. The Committee finds this approach to be unreasonable, offensive, overzealous, and not in the interest of the patient. The Committee finds this to be a failure to maintain the standard of practice of the profession. The Committee further finds this to be unprofessional conduct.

Patient #4

The Committee finds that Dr. Chung failed to maintain the standard of practice of the profession in his care of this patient by conducting excessive vaginal examinations in early pregnancy.

The medical record indicates that as a result of an abnormal pap smear on a date in 2005, Dr. Chung referred this patient for colposcopy at Hospital E. She was followed there from January 2006 until August 2010. During that time she was seen regularly and had repeat cervical biopsies and LEEP (Loop Electrosurgical Excision Procedure) to treat her cervical dysplasia. On her visits to Hospital E, cervical cytology (pap smear) was obtained. Regular reports were sent to Dr. Chung as confirmed in the medical record. During this time, Dr. Chung also performed pelvic examinations and pap smears on the patient (a date in 2007, a date in 2008, a date in 2009 and a date in 2010).

In addition, between 2006 and 2009, Dr. Chung did pelvic and breast examinations on this patient for a variety of other conditions. Dr. Chung prescribed oral contraceptives for her in small quantities, usually at three month intervals as was his practice.

Dr. Chung saw this patient when she became pregnant and performed four pelvic examinations on her in the first trimester of pregnancy in 2010.

Dr. X was of the opinion that Dr. Chung provided repetitious care while the patient was being followed at Hospital E for cervical dysplasia. Dr. X was also critical of Dr. Chung's practice of prescribing birth control pills in unusually small quantities, necessitating the patient's return for renewals at which there were repeated breast and pelvic examinations. Dr. X further testified that of the four breast and pelvic examinations done in the first trimester of pregnancy in 2010, only one was appropriate and necessary**.**

Dr. X in her analysis allowed that more examinations than normal might be anticipated as this patient was at increased risk of unwanted pregnancy and infections. Overall, however, she opined that Dr. Chung had failed to maintain the standard of practice of the profession in the management of this patient.

Dr. Chung testified that Dr. X failed to take into account that almost all visits were initiated by the patient. The Committee did not agree that this factor relieved him of the responsibility for determining whether or not an examination was appropriate.

Dr. Chung agreed that the pap smears were repeated while the patient was followed at Hospital E but indicated that she was not specifically called back; rather, they were performed when she was having a pelvic examination for swabs or speculum examination and the pap smears he conducted would not add to her inconvenience or discomfort but only help to follow the cervical abnormality with the specialist.

Dr. Chung testified that in respect of vaginal examinations in the first trimester of pregnancy, he did what worked well for the patient's outcome. He used vaginal examinations to assess changes in uterine size and this was a carry-over from medical school when ultrasound was not widely used. Even though it is more accessible now, he

still uses physical examination to assess normal growth and viability. He testified that to be useful, the patient needs to go for serial ultrasounds and that it may take a week or two for the report, at which point the information is meaningless. The patient's due date was uncertain, she had a history which increased her risk of cervical incompetence, and he was concerned regarding the growth of the fetus.

It was Dr. X's opinion that Dr. Chung performed examinations in the first trimester of pregnancy that were not needed. The Committee's accepts Dr. X's opinion that conducting repeat vaginal examinations to assess fetal growth is not the standard of practice of the profession. As a consequence, the Committee finds that Dr. Chung failed to maintain the standard of practice of the profession.

The Committee also finds this to be unprofessional conduct. The finding of unprofessional conduct is further supported by Dr. Chung's insensitivity, thoughtlessness and disrespect in performing the number of vaginal examinations he did when this patient was early in her pregnancy and extraordinarily vulnerable.

With respect to the other pelvic and breast examinations, this patient was admittedly a high risk and high maintenance patient. Many of her appointments were self-generated and it is difficult to know how much reassurance she required. Whether each and every breast or pelvic examination can be satisfactorily justified in the circumstances of this patient is difficult to know. The Committee was not persuaded, however, that Dr. Chung failed to maintain the standard of practice of the profession by conducting breast and pelvic examinations at other times.

Although there was evidence that Dr. Chung repeated pap tests that were being conducted by Hospital E, given the particular circumstances of this patient, including her high risk status and history, the Committee finds the allegation of failure to maintain the standard of practice of the profession in conducting these tests not proved. The redundancy which resulted is an example of overly diligent care which, nevertheless, is insufficient to support a finding of failing to maintain the standard.

With respect to Dr. X's opinion that Dr. Chung's "tests of cure" for bacterial vaginosis were not medically necessary, the Committee finds these to be a variation in practice between Dr. Chung and Dr. X, but the Committee was not persuaded that in conducting such tests Dr. Chung failed to maintain the standard of practice of the profession.

With respect to Dr. X's opinion that Dr. Chung fell below the standard of practice by failing to utilize appropriate diagnostic tests when disease states were suspected, in particular with respect to failing to send the patient for ultrasound when fibroids were suspected, as previously indicated, the Committee finds that Dr. Chung was skilled at assessing fibroids through manual examination and it was not a failure to maintain the standard of practice to conduct such examinations manually instead of sending the patient for an ultrasound.

Patient #5

The Committee was not persuaded that Dr. Chung failed to maintain the standard of practice of the profession with respect to this patient. Furthermore, the Committee finds the allegation of disgraceful, dishonourable or unprofessional conduct with respect to this patient not proved.

The medical record indicates that a breast examination was first done in 2002, when this patient was approximately 16 years old. This is recorded as "Breasts 0". Thereafter, breast examinations were carried out, for the most part, annually at the time of general assessments. On occasion, there are notations of lumpy breasts or of a cyst indicating that palpation did occur; however, the usual visit records "Breasts 0".

The first attempt at pelvic examination was in 2005 when the patient informed Dr. Chung of cramps with urination occurring two weeks prior to the visit. Her symptoms cleared. The notes indicate Dr. Chung attempted a vaginal examination and found her to be very sensitive. Dr. Chung appears to have resorted to a rectal examination to assess her pelvis. Culture confirmed a urinary infection and she was treated appropriately.

It was Dr. X's opinion that normally with the complaints of cramps with urination, a vaginal examination would not be done; the urine would be tested. Her view was that this examination was not medically necessary and it demonstrated a lack of judgment on the part of Dr. Chung. Dr. X explained that digital vaginal examination of a virginal patient can be painful. In addition, for a physician to penetrate ones virginal vaginal entrance for any reason that is not medically urgent and that cannot be investigated by non-invasive means is to blatantly disregard the emotional well-being of the patient.

The patient was started on birth control pills in 2010. Both breast and pelvic exams were done at that visit. These examinations were repeated approximately seven months later in 2010.

Dr. X testified that the standard of practice is that breast examinations are usually started when oral contraceptives are started or in a patient's early twenties. Dr. X agreed that in her assessment, she assumed that Breast 0 indicated that the breasts were palpated. The Committee heard from Dr. Chung, however, that Breast 0 may mean either that the breasts were palpated or simply observed.

Most of her breast and pelvic examinations were carried out at annual visits except for one. The Committee was not persuaded that Dr. Chung failed to maintain the standard of practice in this case.

On the matter of attempting a vaginal examination and a rectal examination during an assessment for urinary complaints, the Committee accepted Dr. Chung's concern regarding lower abdominal cramping pain as the reason that he attempted a vaginal examination and performed a rectal examination. While diagnosing and treating a urinary infection does not normally require a pelvic or rectal examination, in the circumstances of this patient, the Committee was not convinced that Dr. Chung failed to maintain the standard of practice by doing a rectal examination. As to the attempted vaginal examination, it was unclear whether there was any degree of penetration. Patient 5 had

been his patient since she was born, he knew her well and was in the best position to judge whether her complaints merited more scrutiny.

Patient #6

The Committee finds the allegations of failing to maintain the standard of practice of the profession and disgraceful, dishonourable or unprofessional conduct with respect to this patient not proved.

The patient had her first pelvic examination in 2005, at a time when she was sexually active and wanted to start oral contraceptives. Dr. Chung conducted a pelvic exam and prescribed three months of birth control pills. She returned on a date in 2006, and indicated that she had a rash. She also reported that she had taken one month of the Marvelon, but had late cycle spotting and thus discontinued it. Dr. Chung conducted both a breast and pelvic exam Dr. X was of the opinion that the breast and pelvic examinations at this appointment were medically unnecessary. Dr. X testified she had concerns about Dr. Chung seeing this patient for a rash and converting the appointment into breast and pelvic assessments.

The patient returned on a date in 2007. Breast and pelvic examinations were performed. The pap test showed an abnormality requiring follow-up. She was provided with a birth control prescription for three months. She returned again on a date approximately one month later and had a thorough physical exam. Dr. X took no issue with these examinations.

The patient saw Dr. Chung again on a date approximately two months later in 2007, with the chief complaint being that she had a light menstrual period. Breast and pelvic exams were conducted which Dr. X thought were medically unnecessary. In her view, the light menstrual period could have been a side effect of the birth control medication or implantation bleeding from pregnancy. Her position is that a urine or blood pregnancy test would have been appropriate to differentiate the potential causes. Dr. Chung did discover a wart during the pelvic examination.

The patient returned again on a date in 2008, and both breast and pelvic exams were performed. Dr. X's position was that the breast exam was not medically necessary, but agreed the pelvic examination was appropriate given the prior wart finding. Three months birth control was prescribed.

On a date approximately seven months later in 2008, the patient returned and both breast and pelvic exams were performed. Dr. X was of the opinion the breast examination was not medically necessary. Her view was the repeat pap test was appropriate but the type of exam (internal digital) was not appropriate, since a speculum exam with pap alone would have been sufficient. Three months of birth control was prescribed. The impression noted in the medical record included a note to rule out fibroids but there was no ultrasound ordered.

The patient returned on a date in 2009, and reported she had had a gynaecological procedure three months earlier. Breast and pelvic examinations were performed. Again, Dr. X was of the view that the breast exam was not necessary since one had been done five months earlier. She agreed the pelvic examination was appropriate.

On a date approximately two months later in 2009, the patient returned and breast and pelvic exams were conducted. Dr. X's position was that the pelvic re-examination was needed only for a repeat pap test and the types of examination performed (bimanual and rectovaginal) were not medically necessary.

Dr. X was of the view that Dr. Chung failed to maintain the standard of practice by failing to use appropriate diagnostic tests (ultrasound) when fibroids were suspected. As previously stated, the Committee did not find this to be a failure to maintain the standard of practice. She was also of the opinion that only providing prescriptions of birth control for three months was below the standard of practice. The Committee does not agree given the circumstances of this patient. She had concerns regarding the birth control she was on, she was not always compliant and had a number of significant ongoing gynaecological problems.

Dr. Chung testified that there were a number of concerns with this patient, including her non-compliance with oral contraceptives, lack of attendance, therapeutic abortion, and concerns for pelvic inflammatory disease. She had a lesion in the vagina and atypical pap smears needing follow-up. His impression of R/O fibroids was a reminder to follow up on her uterus as it was slightly enlarged and irregular. Dr. Chung indicated that he employed rectovaginal examinations in this case where she had a retroverted and retroflexed uterus and he was concerned about pregnancy.

The Committee finds that it is clear that the patient had ongoing gynaecological problems and that she was non-compliant with follow-up, obtaining Gardasil prescriptions, skipping oral contraceptives and not completing treatment with antibiotics as prescribed. The Committee concluded she was not a straightforward patient; rather she was high risk. The Committee finds that for the above reasons, there were legitimate medical reasons for conducting frequent intimate examinations and therefore the allegation of failure to maintain the standard of practice is not proved.

In regard to the matter of the rectovaginal examination which Dr. Chung performed to assess uterine size and shape in the face of possible early pregnancy (June 19, 2009), the Committee concluded this was a judgment call at the time on behalf of the physician. Clearly, Dr. X would have preferred a less invasive examination. However, it was not clear that Dr. Chung, seeking more information, failed to maintain the standard of practice of the profession. The Committee concluded that Dr. Chung's conduct in this particular case was responsive to this patient's problems.

Patient #7

The Committee finds the allegations of failure to maintain the standard of practice of the profession and disgraceful, dishonourable or unprofessional conduct with respect to this patient not proved.

This was another case in which Dr. X was of the opinion that the patient had repeated unnecessary examinations for fibroids. Again, no ultrasound was ordered for confirmation of fibroids. Further, Dr. X noted that none of the four routine pregnancy ultrasounds noted a significant fibroid. Dr. X was concerned that Dr. Chung had created a situation in which the patient was worried unnecessarily about fibroids. There was a note in the patient's chart that she was "worried about fibroids", but the patient did not testify, so the Committee does not know whether or not this was a fear instilled by Dr. Chung. As previously stated, the Committee was not convinced that Dr. Chung fell below the standard of practice of the profession in failing to have patients attend for ultrasound when fibroids were suspected or that it was a failure to maintain the standard of the profession to monitor patients for the possibility of fibroids through the use of manual examinations.

Dr. X was also concerned about the use of rectovaginal examinations on this patient. Dr. Chung conducted two rectovaginal examinations on this patient. Dr. Chung indicated that he needed to do a rectovaginal examination to determine the patient's exact anatomy. Dr. X was of the opinion that it fell below the standard of the profession to conduct these examinations. As previously stated, the Committee does not agree that the standard of practice of the profession is that rectovaginal examinations are limited to use in gynecological oncology. The Committee was satisfied with Dr. Chung's explanation for the use of these two examinations.

An issue was raised with respect to examinations conducted at the end of pregnancy. Dr. X testified that it is routine to examine the cervix at the end of pregnancy, but that it would be very unusual to start these exams before 38 weeks gestation. Dr. Chung conducted four sequential weekly cervical exams starting when the patient was close to 37 weeks. Dr. X concluded that the patient received at least two unnecessary cervical exams. Dr. Chung testified that his standard practice with pregnant patients in the third trimester is to check the cervix around 36 weeks for signs of impending labour. In this case, he testified that the patient had expressed concern about imminent labour. The Committee was unable to determine on the basis of the evidence before it whether or not

Dr. Chung's examinations in this case fell below the standard of practice of the profession. The patient did not testify. The Committee accepted Dr. Chung's evidence that the patient had specific concerns that precipitated these examinations.

The Committee recognized in this case the patient had a number of gynaecological problems and that the patient came to see him because of these complaints outside of pregnancy. In doing the number of examinations he did, it appeared to the Committee that Dr. Chung was overly diligent, but the Committee was not convinced on a balance of probabilities that there was a failure to maintain the standard of practice of the profession.

Patient #8

The Committee finds Dr. Chung failed to maintain the standard of practice of the profession by performing unnecessary vaginal examinations on this patient in early pregnancy. The Committee also finds this conduct to be unprofessional.

Dr. X opined that Dr. Chung failed to maintain the standard of practice of the profession by failing to conduct sensitive examinations only when absolutely required to formulate a diagnosis and/or treatment plan. The Committee does not accept this. With the exception of the examinations during the first trimester of pregnancy, the Committee was not persuaded that Dr. Chung failed to maintain the standard of practice of the profession.

Dr. X notes that this patient had had three breast exams by the age of 15. Dr. X comments that it is "debatable" whether a full physical at age 15 would warrant a breast exam. As in other cases, it was difficult to tell how many times the patient's breasts were palpated as the use of "Breast 0" in the medical record could refer simply to visual inspection or palpation. The Committee notes that the breasts were described as "lumpy" at one of the appointments when the patient was 15 which would suggest palpation. Given Dr. X's view that breast exams at this age were "debatable", there are no grounds to make a finding of failure to maintain the standard of practice of the profession by conducting a breast exam by palpation on a 15 year old patient.

Dr. X was also critical of other breast exams and vaginal examinations that were conducted on this patient later in her life. With respect to the breast exams, as the Committee has previously stated, we did not find that any clear standard of practice was established with respect to the frequency of breast exams. With respect to pelvic examinations, the Committee accepts this was a high risk patient and there were legitimate reasons for attentive care. The medical record confirms that this patient was at high risk of problems. The Committee was not convinced that Dr. Chung failed to maintain the standard of practice of the profession in conducting any of the pelvic examinations he conducted on this patient (with the exception of the examinations conducted during pregnancy as discussed below).

Dr. X also opined that Dr. Chung failed to maintain the standard of practice in the manner of prescribing oral contraceptives, in performing examinations as a test for cure in the absence of ongoing symptoms, and in monitoring of suspected fibroids. The Committee does not agree and has set out its views on these issues earlier in this decision.
Dr. X opined that Dr. Chung failed to maintain the standard of practice in his management and approach to chronic menstrual irregularity. The Committee was of the view that Dr. Chung was overly diligent and this reflected poor judgment but the evidence did not persuade the Committee that there was a failure to maintain the standard of practice.

It was Dr. X's opinion that Dr. Chung failed to maintain the standard of the profession by not adhering to local Ontario standards, which indicate that a single pelvic examination be performed in the first trimester of pregnancy. This patient had pregnancies in 2003 and 2004. In 2003, the patient had a breast and pelvic examination in 2003, when she presented with a concern about the possibility of pregnancy. Dr. X's opinion was that a urine test for pregnancy would have been sufficient. On a date approximately one month later in 2003, the breast and pelvic exams were repeated when the patient attended with complaints of nausea. It was Dr. X's opinion these exams were not medically necessary. On a date five days later in 2003, the patient complained of vaginal bleeding after sex. Dr. Chung conducted a pelvic examination which Dr. X opined was appropriate. She re-

attended on a date in the following month in 2003, again with complaints of nausea. Again, breast and pelvic exams were conducted and it was Dr. X's opinion that these examinations were not medically necessary. In summary, Dr. X concluded that of the two additional pelvic examinations after the first pregnancy visit, one was medically necessary for STI (sexually transmitted infection) screening.

With respect to the second pregnancy, the medical record documents a visit on a date in 2004, where a pelvic examination was done following a positive home pregnancy test. She was asked to return in two weeks; and she was examined again once a month for the next three months in 2004. It was Dr. X's opinion that the pelvic examinations conducted at all of the examinations after the first examination in 2004, were medically unnecessary.

Dr. X testified that in suspected pregnancy, Dr. Chung did repeat pelvic examinations when a simple pregnancy test would do. In the first trimester, he did many pelvic examinations, which in Dr. X's opinion, were unwarranted since dates can be confirmed by ultrasound. On cross examination, Dr. X acknowledged the concerns about cervical incompetence.

Dr. Chung testified that the pelvic examinations in the first trimester were to monitor progression. Later in the pregnancy, he was concerned about a high risk of cervical incompetence, which in fact this patient developed. He testified that she was seen on a date in 2004, having passed mucous and needed a vaginal examination with a speculum to inspect the cervix. Her cervix was sutured at Hospital F and she was subsequently followed and delivered there. This was in his view an example of justification of routinely checking the cervix in the second trimester of pregnancy.

The Committee finds the number of pelvic examinations done in the first trimester of pregnancy to be excessive and unjustified. It is expected that physicians will not become frozen in time even if their pattern of practice has served their patients well in the past. Physicians must evolve and adopt best practices. Dr. Chung was unjustifiably aggressive in carrying out pelvic examinations during the first trimester of pregnancy. In doing so,

Dr. Chung failed to maintain the standard of practice of the profession as outlined by Dr. X and accepted by the Committee.

The Committee also finds this conduct to be unprofessional. The finding of unprofessional conduct is further supported by the insensitivity displayed and the lack of respect for dignity and privacy in performing examinations which were essentially of no value.

Patient #9

The Committee finds that Dr. Chung failed to maintain the standard of practice of the profession by carrying out more pelvic examinations than justified in the first trimester of pregnancy (2006, 2009) and by performing excessive rectovaginal examinations with respect to this patient. The Committee also finds this to be unprofessional conduct.

The medical record indicates this young woman was at risk of pregnancy at the age of 17 in 1993. At that time, she had her first pelvic and breast examination as part of a general assessment. She saw Dr. Chung on many occasions thereafter for both menstrual irregularity and other complaints. Dr. Chung testified that she was anxious and required reassurance.

The record documents two pregnancies (2006, 2009). During the first pregnancy, a pelvic examination was done on three dates, all in the first trimester. During her second pregnancy, a pelvic examination was done on two dates, both in the first trimester.

It was Dr. X's opinion that in the 2006 pregnancy, Dr. Chung performed unnecessary first trimester pelvic and breast examinations on two dates. With respect to the 2009 pregnancy, Dr. X again noted that breast and pelvic examinations were conducted during the first trimester of pregnancy which were not medically necessary. She opined that Dr. Chung did not adhere to local Ontario standards when he performed more than a single

examination in the first trimester of pregnancy, and that this conduct failed to maintain the standard of practice of the profession. The Committee accepts this evidence.

Dr. X testified that it was inappropriate for Dr. Chung to perform concurrent care after he referred the patient to a specialist's care for her twin pregnancy. There was no evidence of mutually agreeable shared care. Dr. Chung testified that this patient was very nervous and came to him for reassurance. He testified that the concurrent visits during her second pregnancy were for other reasons and not for antenatal care. The Committee accepted Dr. Chung's explanation and did not find that Dr. Chung fell below the standard of practice of the professions in continuing to see this patient after she had been referred for specialist care.

The patient underwent eight rectovaginal examinations between 1993 and 2011. Dr. X testified that Dr. Chung performed a number of rectovaginal examinations which she indicated were unnecessary and uncomfortable. In particular, she described it as "highly unusual" that such an exam would be conducted at the patient's first pelvic examination in 1993. Dr. X noted that it seemed that in each instance, the rectovaginal exam was done to confirm the positioning of the uterus as retroverted. Dr. X indicated that it was not clear to her why after the first rectovaginal examination such examinations were required as he could have looked back at his notes to remind himself of this fact. In her opinion, this conduct falls below the standard of the profession.

Dr. Chung testified that the rectovaginal examinations were to assess the patient's retroverted uterus, which was irregular and slightly increased. He testified that there was no need for ultrasound and this was not a big concern. He testified that he is confident in his skill at assessing the uterus and that ultrasound adds nothing. He considered rectovaginal examinations a necessary part of this patient's evaluation when she came with a gynaecological complaint. Even after a short interval (one two dates two weeks apart in 2004), he considered this necessary as due diligence. He testified that she could have been pregnant or had an ectopic and he wanted to be as sure as possible.

The Committee was troubled by the number and frequency of rectovaginal examinations conducted on this patient. As previously discussed, the Committee does not accept Dr. X's evidence that rectovaginal examinations should be reserved to the rare instances where tumours are suspected. Dr. Chung acknowledges these examinations are uncomfortable, but has confidence in his skill to assess the uterus and pelvis in this manner. This is not unreasonable given his experience. Nonetheless, repeating this uncomfortable examination in the absence of complaints after a two week interval was in the Committee's view unjustifiable, and fails to maintain the standard of practice of the profession.

Dr. X opined that Dr. Chung failed to maintain the standard of practice in his diagnosis and management of fibroids by repeat examinations. The Committee did not agree and viewed Dr. Chung's concern and management of fibroids in this patient as an example of overly diligent care, but not a failure to maintain the standard of practice of the profession.

Dr. X opined that Dr. Chung's management of chronic menstrual irregularity by frequent reassessments also constituted a failure to maintain the standard of practice. The Committee did not agree but also viewed this pattern of practice to be overly diligent care.

The Committee concluded that Dr. Chung failed to maintain the standard of practice by performing excessive vaginal examinations in early pregnancy and by performing excessive rectovaginal examinations. The Committee further finds that Dr. Chung engaged in unprofessional conduct in respect of the above. This finding is supported by insensitivity and thoughtlessness in performing unnecessary examinations.

Patient #10

The Committee finds Dr. Chung failed to maintain the standard of practice of the profession by performing unnecessary vaginal examinations during the first trimester of

pregnancy and attempting to do an unnecessary vaginal examination on a virginal patient. The Committee also finds this to be unprofessional conduct.

The medical record for this patient confirms that she had a complex gynaecological history and was at high risk for developing STD. She was unreliable in reporting about her sexual activities. She had a suspected history of sexual abuse as a child.

On a date when she was 12 years old, Dr. Chung attempted a vaginal examination. He indicated that the internal organs were not well palpated. He also stated that his decision to do a vaginal examination was made as her mother was concerned that her daughter had become sexually active. He noted a vaginal introitus. He described the perineum as macerated and inflamed. She was treated for yeast infection.

Dr. X testified that Dr. Chung needed to be particularly sensitive to this patient, as she had been sexually abused as a child. Dr. X was critical of various aspects of this patient's management. It was her opinion that a vaginal examination at age 12, even with the symptoms of an inflamed perineum and white discharge, was not appropriate as the patient was virginal.

Dr. X opined that Dr. Chung failed to maintain the standard of practice of the profession in his care of this patient during the first trimester of her two pregnancies because he conducted more than the one recommended pelvic and breast examination. Dr. Chung testified that he did not agree with only one examination in early pregnancy. He testified that in following this patient, he did the examinations he believed necessary to be thorough.

As previously indicated, the Committee accepts that it is not the standard of practice to conduct repeat vaginal examinations in early pregnancy to monitor fetal growth. Dr. Chung suggests there is latitude and the standard articulated by Dr. X reflects the minimum. The Committee does not agree. His practice failed to take into consideration

that his pregnant patients were vulnerable and were owed the respect and dignity of not being put through examinations which were of no value.

The Committee further recognizes that particular sensitivity is needed when dealing with young and vulnerable virginal patients, especially one in which there was a possibility of prior sexual abuse. Care should be taken with such patients so as not to do vaginal examinations which are not absolutely necessary. Dr. Chung did not have to attempt digital examination when this patient was 12 years old, particularly when pressured by this child's mother. It added nothing to the diagnosis or treatment of yeast infection. To act at her mother's request (virginity test) is not in this Committee's view appropriate.

The Committee agrees with the expert evidence of Dr. X and concludes in both of the circumstances described above, that Dr. Chung failed to maintain the standard of practice of the profession.

The Committee also finds the above to be unprofessional conduct. In performing examinations of no value, he demonstrated an insensitivity, thoughtlessness and disrespect.

Dr. X opined that Dr. Chung also failed to maintain the standard of practice when he performed follow up pelvic examinations for possible fibroids. The Committee views this as overly diligent care but makes no finding of failure to maintain the standard in this regard. Dr. X's comments about referral to pediatric gynaecology for suspect foreign bodies in the vagina are noted; however, when this patient presented with the symptoms of what appeared to be a yeast infection the possibility of a foreign body was not raised as a concern.

Dr. X opined that Dr. Chung failed to maintain the standard of practice in omitting documentation of the counseling and special care taken with virginal patients. Dr. Chung did not document this discussion but indicated that the examination was done with prior explanation, gentleness and reassurance. The Committee accepts Dr. Chung's evidence.

The Committee viewed Dr. X's opinion with respect to documentation to represent the ideal practice, but does not find a failure to maintain the standard of practice with respect to this issue.

Patient #11

The Committee finds the allegations of failure to maintain the standard of practice of the profession and disgraceful, dishonourable or unprofessional conduct with respect to this patient not proved.

Patient 11 testified at the hearing.

She testified that she changed in the examination room. She indicated that Dr. Chung was usually sitting and writing at his desk or out of the room while she changed. She testified that the privacy curtain was always pulled either by Dr. Chung or herself. She further testified that she always had a gown or sheet to cover her body.

She testified that she had pelvic examinations done by Dr. Chung during which she experienced "normal discomfort". She felt awkward as she would with someone inspecting her. She recalled yearly physicals at which pap smears were done. She had cramps and an abnormal uterus. She had pelvic examinations done once or twice a year which she did not consider frequent. She testified that she asked Dr. Chung why the examinations were being performed and he told her the reasons, though she could not recall specifics.

Patient 11 testified that she thinks Dr. Chung did breast examinations once a year. She noted that there was the normal discomfort and awkwardness at being topless. On one occasion, she noted a cyst while doing self-examination and wanted Dr. Chung to confirm that no treatment was needed.

She could not recall whether she was offered the opportunity to have a third party present during these examinations, but thought no such offer had been made. She did not notice a sign in the waiting room to the effect that she could have a third party present. She was

comfortable with the examinations. She agreed that she made the appointments for check-ups or if there were issues.

The Committee accepted the evidence of Patient 11 as truthfully representing her interaction with Dr. Chung. It was reasonably consistent with her medical record.

The medical record indicates the usual well-child care. On a certain date, the patient (age 17) had a general assessment which included a breast examination (noted as Breasts 0) but not a pelvic examination. Her first pelvic examination was carried out on a date in 2001, when she presented with complaints of painful, irregular periods and sore breasts. Breast cysts were noted. The uterus was described as irregular but not enlarged. Dr. Chung's impression included R/O [rule out] fibroids in addition to primary dysmenorrhea and fibrocystic condition. Her next pelvic examination was on a date in 2007, when she came for a pap smear. Breasts were palpated with tenderness noted and marked on a diagram. Her uterus was again irregular but not enlarged. Oral contraceptives were started and she was asked to return in three months. She was seen on two more dates in 2007, on a date in 2008 and on a date in 2009. Findings were unchanged.

Dr. X notes that on six occasions, Dr. Chung noted "fibroids" as his impression (a date in 2001, on three dates in 2007, a date in 2008 and a date in 2009). Dr. X testified that a recheck of fibroids was not a reason to do follow-up pelvic examinations in short intervals. Dr. Chung never ordered an ultrasound to confirm the presence of fibroids. Dr. X notes in her report that following suspected fibroids clinically "was an unusual practice". She opined that Dr. Chung fell below the standard of practice by failing to use appropriate diagnostic tests (i.e. ultrasound) when disease states are suspected. As the Committee had stated previously, Dr. Chung was skilled at assessing fibroids through pelvic examinations. The Committee was not convinced that Dr. Chung's failure to order an ultrasound to confirm the presence of fibroids was at that time a failure to maintain the standard of practice of the profession.

Dr. X was concerned that breast exams were carried out in many circumstances in which the presenting complaint was unrelated to the breasts. The Committee noted that many of

the breast examinations were recorded as “Breasts 0”. This made it difficult to know whether the examinations done, particularly those done when this patient was younger, were simply observation or palpation. This patient was not followed closely except when she was placed on oral contraceptives. As previously stated, the Committee was not convinced, based on the evidence before it, that there was a clear standard as to how early in a woman’s life breast examinations should begin, how often they should be carried out, or under what circumstances. The Committee was not convinced that Dr. Chung failed to maintain the standard of practice of the profession in carrying out the breast exams which he conducted in this case.

The Committee notes there were a number of examinations (both breast and pelvic following the initiation of oral contraceptives). While Dr. Chung appeared to be overly diligent, there was no convincing evidence in the Committee’s view of a failure to maintain the standard of practice of the profession.

Patient #12

The Committee finds the allegations of failure to maintain the standard of practice of the profession and disgraceful, dishonourable or unprofessional conduct with respect to this patient not proved.

Dr. X was concerned with respect to two rectal exams that were conducted on this patient at a young age. The patient was brought to Dr. Chung with complaints of abdominal cramps and pain with defecation. Rectal examination and proctoscopy revealed a healing fissure. Six days later, there was a phone call from the patient’s mother indicating there was anal pain, bleeding and constipation. The patient was seen again approximately one week later with continuing complaints and a rectal examination was repeated.

Dr. X testified that she was of the view that the repeat rectal examination performed on this patient when she was 10 years old was unnecessary. Her view was that while the need to look at the perianal region to see whether the fissures were healing was appropriate, another digital rectal exam was not appropriate.

Dr. Chung testified that he conducted a repeat rectal examination for anal fissures, because he needed to be sure that the fissures were healing as she had a new complaint of rectal bleeding. He testified that although the child was apprehensive initially he was able to do the examination without causing distress to the patient and he would have skipped it if she had not settled down.

The Committee was not convinced that Dr. Chung's decision to conduct the second rectal examination constituted a failure to maintain the standard of practice of the profession. The Committee deferred to the judgment and opinion of the examining physician as to the appropriate follow-up in these circumstances. Dr. X's opinion with respect to how she would have handled this patient differs from Dr. Chung but reflects a personal style of management, rather than the standard of practice.

With respect to breast examinations, Dr. X noted that Dr. Chung conducted a number of breast exams in circumstances in which the presenting complaint was not related to the breasts. In particular, Dr. X noted that such examinations were medically unnecessary on a young patient (ages 14 to 19) who was not on hormonal birth control and had no breast symptoms. In another circumstance, it was her view that a breast exam was unnecessary as one had been done only eight months earlier. The Committee reviewed the medical records. On two occasions, the breast exam was noted as "Breast 0", which means it is unclear as to whether the breasts were palpated or not. In any event, as the Committee has previously stated, there was no clear standard as to when breast examinations should be initiated in a patient and whether or not the patient had to be on hormonal birth control or symptomatic in order to justify carrying out a breast examination. Consequently, the Committee did not find that Dr. Chung's breast examinations of this patient constituted a failure to maintain the standard of practice of the profession.

The first pelvic examination (visual only) was conducted when the patient was eleven years old in 1997. The presenting complaint was "stress incontinence when laughing occ enuresis". The pelvic examination is described as "GU - pink mucosa - no stress incontinence demonstrated". The impression is noted "R/O UTI" or rule out urinary tract

infection and a urine culture is ordered. It was Dr. X's opinion that a visual inspection of the genitalia added little to the ability to make a diagnosis and additional questions could have simply been posed with respect to history regarding pain and discomfort. During cross examination, Dr. X agreed that she was not in practice in 1996. She agreed there were no written guidelines at that time regarding the necessity/ frequency of pelvic examinations. It was the Committee's view that this was a matter for the physician's judgment. The Committee was not convinced that conducting a visual inspection in these circumstances was a failure to maintain the standard of practice of the profession.

On a date in 2008, the patient requested oral contraceptives. Dr. Chung completed a physical examination (including breast and pelvic examination). These were repeated on a date in 2009, a date in 2010 and a date in 2011. On both the 2009 and 2010 dates, Dr. Chung diagnosed fibroids. On another date in 2010 nodules in the patient's right breast were noted. Dr. X was of the opinion that there was no need for the pelvic examination on this date in 2010, because a pelvic exam had been done eight months earlier.

Dr. X was also critical that Dr. Chung had diagnosed fibroids and not confirmed the diagnosis by ultrasound. The Committee has previously addressed the issue of fibroids and does not find Dr. Chung's failure to send the patient for an ultrasound to be a failure to maintain the standard of practice of the profession.

The Committee concludes that the frequency of examinations of this patient reflected Dr. Chung's pattern of overly diligent care. The Committee was not convinced, however, based on the evidence before it that this constituted a failure to maintain the standard of practice of the profession.

Patient #13

The Committee finds the allegations of failure to maintain the standard of practice of the profession and disgraceful, dishonourable or unprofessional conduct with respect to this patient not proved.

This patient testified at the hearing. She was Dr. Chung's patient from birth until Dr. Chung retired.

She testified that she would change behind the curtain. Dr. Chung closed the curtain and she had no memory of it being open. While she was changing, Dr. Chung would be sitting at his desk. She had a paper drape to cover herself every time. She recalled being weighed while she was naked at least once and she testified that she thought this was "kind of weird".

She testified that the pelvic examinations were fine, though awkward and uncomfortable. She had fibroids and was told to get checked regularly. She had one ultrasound a few years ago. She understood that it was normal to go regularly to the doctor if on oral contraceptives. She was given samples on some occasions and prescriptions for three to six months. She did not think she asked for longer prescriptions.

She did not consider breast examinations to be as intrusive as internal examinations. She had no breast issues. She thought the regular breast examinations were to check for breast cancer. She was under the impression these examinations were needed regularly.

She testified she had rectovaginal examinations which were also uncomfortable but she understood that these examinations were conducted because her uterus was tipped back. She testified that she was never encouraged to bring along a third party to examinations, and was not informed that Dr. Chung's receptionist could attend during the examination. She did not recall a sign to this effect in the office.

Dr. Chung did not tell her when to come back, she just booked appointments. She was satisfied with his care, comfortable with him and believes the examinations were warranted.

The Committee accepted that the evidence of this patient accurately reflects her experience as a patient. Her testimony was reasonably consistent with her medical record.

According to her medical records, this patient had 24 pelvic examinations between the ages of 19 and 28. Dr. X noted that a number of the pelvic examinations were done for "fibroids" despite the fact that an ultrasound conducted on a date in 2001, had not revealed any fibroids.

Dr. X testified that this patient did not have risk factors which would warrant the high frequency of pelvic examinations. The patient had repeat pelvic examinations done to follow fibroids (a date in 2003; two date in 2004; two dates in 2005, two dates in 2007 and on a date in 2009). Dr. X opined that there was no medical reason to re-examine this patient for possible fibroids after the normal ultrasound was obtained in 2001.

Dr. X also criticized Dr. Chung for prescribing small amounts of oral contraceptives necessitating frequent return visits. At most of the return visits, he performed breast and pelvic examinations.

Dr. X further testified that rectovaginal examinations were conducted at an unusual frequency and appeared to be done for no reason. She noted that on each occasion, the rectovaginal examination was done to confirm the positioning of the uterus as retroverted. In her opinion, Dr. Chung could have simply reminded himself of this fact by looking back at his notes, instead of repeating the examination.

Dr. Chung testified that he believed it was useful to have patients on oral contraceptives return frequently. Dr. Chung testified that he was also concerned about her smoking. Dr. Chung testified that his concern about fibroids was also a reason for three month examinations as he had ongoing suspicion of fibroids given the size and shape of her uterus, the possible effect of oral contraceptives and her family history.

Dr. X opined that Dr. Chung failed to maintain the standard of practice by frequent and unnecessary examinations. Dr. Chung's approach in this case represents, in the Committee's view, overly diligent care regardless of whether the issue was concern regarding fibroids or monitoring of oral contraceptives. Rectovaginal examinations to

monitor a change in size or shape of an enlarged or irregular uterus are also in keeping with Dr. Chung's approach. In neither case was the Committee satisfied in the circumstances of this patient that there was convincing evidence to support a finding of a failure to maintain the standard of practice of the profession.

Patient #14

The Committee finds Dr. Chung failed to maintain the standard of practice of the profession in his care of this patient by performing unjustified vaginal examinations, including repeated examinations in early pregnancy and digital vaginal examination when this patient was virginal. The Committee also finds this to be unprofessional conduct.

This patient testified at the hearing.

She was a patient of Dr. Chung from age 13 until last March of 2012 when she received a letter that he was retiring.

She testified that there was a curtain in the examination room but that it was not closed. She testified that she was not given a gown or cover. She was weighed fully clothed or with nothing on if an examination was to follow. She testified that she trusted Dr. Chung and was comfortable with him.

She testified that she was never uncomfortable with pelvic examinations. She had gynaecological issues, such as infection, that Dr. Chung would treat. She did not recall if Dr. Chung discussed the reasons for examinations with her. She never questioned the frequency of examinations, indicating that he would know what was needed to keep her healthy.

She testified that she thought breast examinations in general were fine. They were done if there was pain or some other complaint, or to be sure that nothing was wrong.

She had no recall of rectal examinations.

She did not recall being encouraged to bring a third party to the examination or being informed that Dr. Chung's receptionist could attend if she preferred.

She did not recall any changes over time with privacy or the frequency of breast and pelvic examinations.

She further testified that she received oral contraceptives from Dr. Chung, usually for three months at a time. This was fine with her and she never asked for more. She testified this is the same for her current doctor.

She testified that the frequent pelvic examination visits were based on her problems and the need for follow-up. In cross examination, she testified that Dr. Chung was always professional and she brought her daughters to see him.

The Committee found the witness to be credible. The medical record is lengthy and complex and consistent with her testimony.

The medical record confirms that this patient had many significant gynaecological problems. In addition, she had a breast lump approximately 2 cm in size first noted in 1986 and followed for three years with eventual resolution. She also came repeatedly to Dr. Chung for many unrelated complaints.

Dr. X identified this patient as a high risk patient for pelvic infections and indicated that she took this into consideration when evaluating the necessity of pelvic examinations. Dr. X's opinion, however, was that despite this fact, the number of breast and pelvic examinations was alarming. Dr. X indicated that 65/180 pelvic examinations done over 15 years were unnecessary and 103/127 breast examinations were unnecessary. Overall, her opinion was that Dr. Chung failed to maintain the standard of practice of the profession with respect to his care of this patient.

A breast lump was detected when the patient was 13 years old in 1986. Dr. Chung re-examined the lump on two further dates in 1986, and on two dates in 1987. Dr. X opined

that because of the description of the lump, its stability and the age of the patient, there would be no need to continue to recheck the lump more than once yearly. She notes, however, that the lump was examined another 17 times before the patient was prescribed birth control pills in 1990.

The Committee was of the view that the presence of a 2 cm palpable lump was a legitimate reason to perform follow up breast examinations to monitor clinical behaviour.

On a date in 1987, this patient came to see Dr. Chung when she was 14 years old complaining of three months amenorrhea. She claimed not to be sexually active. Dr. Chung testified that on this visit, he performed a vaginal examination to ensure the absence of pregnancy or ovarian cysts at the mother's request. He describes a one finger examination. She was found to have an intact hymen. Dr. Chung identified a small retroverted uterus. This vaginal examination was repeated on a date approximately three months later in 1987, at a time when no pelvic complaints were noted. Dr. X's view was that a digital vaginal examination when a patient is virginal is unusual and should be avoided if possible. At age 14, irregular cycles are common. With respect to the repeat digital vaginal examination three months later, Dr. X opined there was no indication for this examination. The Committee finds that the digital vaginal examinations of this patient when she was virginal (age 14) was done at a time when she had no significant symptoms and when she was not sexually active. If pregnancy had been a concern it could have been tested by other means. The Committee does not accept that Dr. Chung's reasons justify his performing such an invasive procedure on a virginal patient and finds that in doing so he failed to maintain the standard of practice of the profession.

Dr. X opined that a competent family physician would have documented the reason for examination, the counseling that occurred and the special care taken in the process of pelvic examination of virginal women. She concluded that Dr. Chung failed to maintain this standard in failing to do so. The Committee did not agree with Dr. X. While there was nothing charted about counseling or special care, it does not necessarily follow that

no discussion occurred. Dr. Chung indicated that he was gentle and did the examinations in the presence of her mother.

The patient had a full term pregnancy in 1994. The medical record documents a normal pregnancy (uterus 6 weeks) on a date in 1993. Repeat vaginal examination was done five days later (vaginal discharge consistent with moniliasis), two weeks after the last appointment, eleven days after the last appointment (brownish discharge), four days later (10 weeks), a month later, and in two months.

Following this pregnancy, the patient continued to have frequent visits, with many complaints which included recurrent vaginal infections. There were further pregnancies leading to spontaneous abortions and Bartholin's abscess.

Dr. Chung notes early pregnancy in 2002. She had vaginal examinations weekly as there was concern about spotting. She was examined again on a date in the following month and on a date in the next month, when she was no longer spotting.

Dr. Chung testified that his pattern of care in pregnancy allowed for reassurance of himself and the patient. As previously discussed, the Committee does not accept that repeat vaginal examinations in early pregnancy to assess growth is acceptable care. The Committee agrees with Dr. X's opinion that Dr. Chung failed to maintain the standard of practice in performing intimate examinations which were not appropriate. Dr. X does not refer specifically to examinations during pregnancy but the Committee highlights these particular examinations as examples which support such a finding. The Committee in its review of this patient recognizes the many problems she was faced with and her need for frequent medical care. Regardless, the medical record demonstrates that vaginal examinations were performed on five dates in late 1990, and four dates in early 1991. On these occasions, the patient was often seen for other reasons and had no significant gynaecological problems. Dr. Chung cites concern regarding unsuspected pregnancy and adjustments to her oral contraceptive medication as reasons for examination. The Committee accepts the evidence of Dr. X that these repeated vaginal

examinations were inappropriate and failed to maintain the standard of practice by doing them.

The Committee also finds that Dr. Chung engaged in unprofessional conduct by performing excessive and unnecessary intimate examinations and performing vaginal examinations on this patient when she was virginal without justification. In doing so, he exhibited an insensitivity and lack of respect for privacy.

The Committee considered the opinion of Dr. X and her criticism of Dr. Chung's approach to prescribing and monitoring patients on oral contraceptives, his approach to follow-up of suspected fibroids and use of rectovaginal examinations. While the Committee does not condone Dr. Chung's overly diligent pattern of care, the Committee was not convinced that Dr. Chung had failed to maintain the standard of practice with respect to these issues.

Patient #15

The Committee finds the allegations of failing to maintain the standard of practice and disgraceful, dishonourable or unprofessional conduct with respect to this patient not proved.

The medical record confirms that Dr. Chung first performed a breast and pelvic assessment on this patient on a date in 2003. She came to him for more oral contraceptives which had been previously prescribed for her elsewhere. Cervical scarring and cervicitis were documented and a follow up on a date in the following month was arranged after treatment.

Dr. X noted that one would expect an imaging study at this point, not continued clinical observation of a suspected reproductive tract abnormality. She opines that an ultrasound, for example, would have defined the diagnosis (if any) and prevented the patient from needing frequent exams of a sensitive and potentially uncomfortable nature. The Committee respects Dr. X's opinion but does not find that failing to order an ultrasound

in this case is sufficient grounds for a finding of failing to maintain the standard of practice.

On a date in 2006, cervical dysplasia is documented and she subsequently was referred to Dr. Y for investigation of this matter. While she was seeing Dr. Y, the chart indicates that she continued to see Dr. Chung at roughly six month intervals at which time pap smears were repeated. There is evidence of faxed reports from Dr. Y on August 28, 2007, which relate to procedures done in August of 2006 and May 2007, sent at the patient's request. The medical record also shows results of a smear done in December 2006 being faxed to Dr. Chung in May 2007. Dr. X was critical of Dr. Chung duplicating pelvic examinations and pap smears after referring the patient for specialist care. Dr. X's opinion was that more examinations than needed were performed. Dr. X agreed, however, in cross examination that it would be the family doctor who would screen for STD's, not the specialist.

Dr. Chung testified that he had concerns with this patient's reliability in keeping appointments. He testified that if she was in the office and he was going to do a pelvic examination he would repeat the pap smear, especially if he had not heard from the specialist. He did this so he would have a better handle on her condition. He testified that he never called her back to repeat the pap smear and the pelvic examination was being done for other reasons. He had been unsuccessful in getting reports regularly from Dr. Y. He testified that his secretary had called and left messages a number of times. He then asked the lab to send him a copy of the reports directly which was acceptable and he did not need to conduct these examinations himself.

The Committee finds the allegation of failing to maintain the standard of practice not proved given the circumstances of this patient. While to an extent the examinations of her cervix were repetitious, Dr. Chung had legitimate concerns regarding her reliability and for a time had no current reports from Dr. Y.

Dr. X testified that Dr. Chung failed to maintain the standard of practice by giving this patient a small amount of oral contraceptives which would have the effect of requiring her to return frequently, at which point he would examine her. The Committee has previously explained its conclusion that prescribing small amounts of oral contraceptives and requiring the patient to return for examination does not necessarily constitute a failure to maintain the standard of practice of the profession. The circumstances in which the prescriptions are provided have to be examined in each case. In this case, the Committee is not persuaded that this pattern of prescription was a failure to maintain the standard of practice.

In addition, Dr. X testified that while Dr. Chung was suspicious of fibroids, he did not confirm this diagnosis by ultrasound; instead, he continued to monitor the potential for fibroids through repeated pelvic exams. As previously explained, the Committee was not convinced that failing to order an ultrasound in a case of suspected fibroids constitutes a failure to maintain the standard of practice of the profession.

The Committee reviewed the circumstances of this case and overall was not persuaded that Dr. Chung had engaged in professional misconduct with respect to this patient. In hindsight, the number of examinations may appear excessive, but Dr. Chung's explanation was not unreasonable.

Patient #16

The Committee finds Dr. Chung failed to maintain the standard of practice of the profession by performing unnecessary vaginal examinations in early pregnancy with respect to this patient. The Committee also makes a finding of unprofessional conduct.

The medical record confirms that while she was less than 16 years old, four breast examinations were performed by Dr. Chung (one two dates in 1997, a date in 1998 and a date in 1999). The examinations are recorded as "Breasts 0" except on a date in 1999, where the record states that breasts are lumpy but normal. These visits are marked as general assessments (G/A). From 2000, there were many breast examinations carried out

when there were no breast complaints. These were often at monthly intervals but ranged from two weeks to eleven months. Breasts are noted as “Breasts 0” most often, but swelling and tenderness is occasionally documented. Dr. X testified that a number of breast examinations were done when they were unnecessary. Clusters of breast examinations were done when the patient was in her teens and were unrelated to any breast complaints.

Dr. Chung testified that he tries to do the best he can. When challenged that his routine during breast exams was palpation, he responded that it depends on the patient. If a patient is on oral contraceptives or has breast signs or symptoms, he testified that for sure he would palpate. For adult women, he may or may not palpate. When challenged as to whether breast examinations were necessary, he drew a parallel to checking the neck veins, cardiovascular system etc.

The Committee was struck with the number of breast examinations performed on this patient. While a teenager, there were at least four occasions where palpation was definitely used. There were at least nine where “Breasts 0” was documented and the Committee was of the view that some, if not all, of these likely included palpation. Dr. Chung was in the practice of recording Tanner staging when doing breast examinations in children and did so in this patient up to 1997. With his fastidious approach, the Committee finds that the breasts were palpated on more than four occasions when there was no apparent reason to do so. In practising in this manner and admitting that he viewed examining the breasts much like the neck veins etc., he demonstrated a clear lack of appreciation of and insensitivity to the intimate nature of these exams.

While the Committee was troubled by this practice, it was not possible to accurately know how often palpation occurred. With no clear standard as to expected frequency of breast examinations, the Committee concluded that the allegation of failure to maintain the standard had not been proved. The Committee considers this a further example of overly diligent care.

Pregnancy was diagnosed in 2003 and pelvic examination and breast examinations were repeated on a date two weeks later and on a date two weeks after that. Pregnancy was again diagnosed in 2008, and the patient had repeated breast and pelvic examinations done on three dates in 2008 at two week intervals. Dr. X testified that Dr. Chung failed to maintain the standard of practice, in that he performed unnecessary examinations during the first trimester of pregnancy in 2003 and 2008. Even though this was a high risk patient, such examinations served no purpose.

Repeated pelvic examinations in the first term of pregnancy are clear from the chart. Dr. Chung did not dispute this occurred; rather it is how he followed his pregnant patients. He argued that the important thing was a healthy outcome. The disregard for his patient's right to have such examinations done only when necessary is particularly important in early pregnancy when women might be described as particularly vulnerable. He does not appear to consider this aspect at all. While this may have been acceptable practice at the time he went to medical school, it is clearly not the way pregnancy was managed at the time of the care of this patient. What patients should expect was clear from the evidence of Dr. X.

The Committee finds this pattern of care disturbing and finds this to be a failure to maintain the standard of practice of the profession. The Committee also finds this to be unprofessional conduct. Dr. Chung's admitted insensitivity in comparing intimate examinations to examination of neck veins illustrates his unthinking and insensitive approach.

Dr. X opined that Dr. Chung failed to maintain the standard of practice when he failed to obtain an ultrasound to confirm suspected fibroids. The Committee does not agree for reasons that have been set out earlier in this decision.

Patient # 17

The Committee finds Dr. Chung failed to maintain the standard of practice of the profession in respect of Patient 17 by repeatedly attempting vaginal examinations on this virginal patient. The Committee also finds this to be unprofessional conduct.

The medical record discloses that this patient had a number of serious problems. She was unable to satisfactorily look after her personal hygiene.

Dr. X was of the view that there were several examinations whose nature was not medically appropriate. In particular, Dr. Chung repeatedly attempted a digital vaginal examination, although the patient was reported to be virginal. Dr. X found this "unusual, medically unnecessary and truly concerning in a vulnerable patient at low risk of sexual infections or cervical dysplasia."

The medical record indicates that Dr. Chung first attempted a vaginal examination when the patient was 15 years old. She came to see him for seizures and a vaginal itch. She had not yet had a period. She had an irritated vulva. She had an intact hymen preventing adequate examination and a rectal examination was performed instead.

She was seen for similar complaints on a date in 1999. Examination was attempted but unsatisfactory and rectal examination was repeated. Examination was attempted again four months later in 1999. Vaginal examinations were noted on a date five months later in 1999, a date in 2001, and a date in 2009, and at all times she was noted as virginal. She was examined again on a date three months later in 2009 with the vagina admitting only a finger-tip. On a date in 2010, a vaginal examination confirmed a very tight hymen not admitting one finger and rectovaginal examination was refused.
Dr. X testified that with patients who are developmentally delayed and not adept at self-care, it is often necessary to regulate menses with oral contraceptives. Proactive care plans are often indicated. Dr. X testified that this patient was virginal and there was no

reason to do a pelvic examination. Dr. X was also critical of two rectal examinations done in close proximity.

Dr. Chung testified that this patient functioned at the level of an 11 to 12 year old. She always attended with her mother. Dr. Chung indicated that he examined this young woman at the request of her mother who was concerned that she might be sexually active. Dr. X indicated that there was no reference in Dr. Chung's chart to any concern by the mother about sexual abuse or sexual activity.

Dr. Chung testified that the mother was concerned about her daughter's vaginal discharge and that she had not had a period (1998). That was why he did a complete physical examination. He indicated the repeat examination in early 1999 was to make sure there was nothing new. He testified both the mother and patient were reassured. Dr. Chung testified that the patient's mother was concerned about sexual activity, did not trust her daughter and wanted Dr. Chung to check. When periods were missed and the mother was concerned, Dr. Chung would examine her and prescribe a short course of Provera to induce a period.

Dr. Chung was questioned as to why there was no notation regarding oral contraceptives in the medical record. He indicated that there was a lot happening with this patient, who had many other concerns and it was probably just missed.

Dr. Chung testified that his examination on a date in late 1998 was, in part, a "virginity test", which just meant a fingertip, and he was assured there was no imperforate hymen. He testified that for this patient's mother, it was an overriding concern. The Committee did not accept Dr. Chung's explanation as being a legitimate or reasonable basis to conduct such an examination.

The Committee was shocked by the number of attempts to do a vaginal examination on this young woman who was not sexually active and documented as virginal time after time. Dr. Chung appears to have given no thought to how this young woman, who was

particularly vulnerable given that she was developmentally challenged, might feel. To repeatedly respond to requests from a parent to assure virginity is, in the Committee's view, unsupportable. The disrespect and insensitivity displayed in the management of this challenged young woman was astounding and constitutes a significant failure to maintain the standard of practice of the profession.

The Committee finds that Dr. Chung failed to maintain the standard of practice of the profession by conducting repeated vaginal examinations in this virginal patient.

The Committee also finds that Dr. Chung's treatment of this patient was unprofessional. He demonstrated a lack of sensitivity and respect in acting in the manner he did.

Patient #18

The Committee finds Dr. Chung failed to maintain the standard of practice of the profession in respect of this patient by the performance of unjustified vaginal examinations in early pregnancy. The Committee also finds this to be unprofessional conduct.

The medical record confirms that Dr. Chung performed the first pelvic examination on on a date in 1992, at a time when the patient was sexually active. Thereafter, she saw Dr. Chung on numerous occasions for gynaecological problems, as well as a host of other issues.

Pregnancy was diagnosed in 2006. She had pelvic examinations performed on the date of diagnosis, three days later and on a date approximately one month later in 2006. Pregnancy was again diagnosed in 2008, and she had a vaginal examination repeated approximately one month later. Dr. X was critical of frequent breast and pelvic examinations in early pregnancy, as noted in the 2006 pregnancy and again in 2009. Dr. X opined that Dr. Chung failed to maintain the standard of practice in conducting such examinations in early pregnancy. Dr. Chung testified that his practice of repeating pelvic examinations in the first trimester of pregnancy to monitor fetal growth is simply

the way he practises. He believes the guidelines referred to by Dr. X are not meant to be applied rigidly.

The Committee accepts the evidence of Dr. X regarding the schedule and content of prenatal care, which clearly indicates a single complete physical examination in the first trimester of pregnancy. Dr. Chung was not faced with abnormal bleeding or possible miscarriage. He did vaginal examinations simply to monitor fetal growth. This is unnecessary and clearly breaches the standard articulated by Dr. X.

Furthermore, Dr. Chung failed to understand that the examinations he was doing were intensely private and invasive. His perfunctory manner and failure to respect the sensitivity surrounding these examinations was clear to the Committee. It is a failure to maintain the standard of practice of the profession and it is also unprofessional conduct.

Dr. X was also concerned that Dr. Chung "manufactured" reasons for pelvic examinations. The Committee does not find this to be the case. Dr. Chung was overly diligent and insensitive regarding the nature of the examinations and the potential invasion of his patient's privacy, but the Committee was not of the view that there was anything deceptive or self-motivated in his conduct. Furthermore, the Committee is not prepared to conclude that his treatment of bacterial vaginosis and yeast vaginitis and his management of high serum prolactin constituted a failure to maintain the standard of practice of the profession. He may have been overly diligent in his treatment of these conditions but not to the point of failing to maintain the standard of practice.

As was the case with a number of other patients, Dr. X was also critical of Dr. Chung's practice of only prescribing oral contraceptives for short periods, and for recalling the patient repeatedly to check fibroids and not ordering ultrasound to confirm that diagnosis. As previously discussed, the Committee finds this is not a failure to maintain the standard of practice of the profession.

Patient #19

The Committee finds that Dr. Chung failed to maintain the standard of practice of the profession in respect of this patient by conducting unjustified vaginal examination of a virginal patient, repeated unnecessary rectovaginal examinations, and by performing more vaginal examinations than necessary in the first trimester of pregnancy. The Committee also finds that Dr. Chung engaged in unprofessional conduct.

A pelvic examination was first done as part of a general assessment on a date in 2000, when this patient was 16 years old. She was virginal. Nonetheless, a digital vaginal examination was done and a retroflexed uterus was confirmed by rectal examination. She was not sexually active at the time and noted only irregular periods. Dr. X's view was that this exam was medically unnecessary and, in her words, "cruel".
Dr. Chung stated in his response to the College (Exhibit #13, page 77) that "only a one finger examination was performed". He noted a 3rd degree retroverted and retroflexed uterus and a rectal examination was performed to evaluate the size and shape of her uterus. He considered this necessary to obtain a complete picture of the pelvic organs.

The Committee agrees with Dr. X, noting that irregular periods in a 16 year old patient are not unexpected. The Committee was troubled by the inclusion of vaginal examination (one finger or not) and rectal examination in a general assessment performed on this patient when she was virginal, 16 years old and not sexually active. There is no legitimate or justifiable reason in the Committee's view to support the need for a digital vaginal examination or a rectal examination. The Committee did not accept that menstrual irregularity constituted a sufficient indication. As a consequence, the Committee finds that Dr. Chung failed to maintain the standard of practice.

After 2002, rectovaginal examinations were regularly included as part of the patient's pelvic examinations. In total, Dr. Chung performed eleven rectovaginal or rectal exams for the purpose of examining pelvic organs. According to Dr. X, only one exam was necessary to confirm the uterus was retroverted. She testified there was no need to recheck by rectovaginal examination for the position of the uterus at every visit, and that

this is not done in family practice. She acknowledged the difference in training between Dr. Chung and herself. What she found surprising was that Dr. Chung used rectovaginal examinations so frequently.

Dr. Chung testified that rectovaginal examinations can be uncomfortable if the patient is tense. He believes that this examination is needed to assess the size and shape of the uterus when it is retroverted and to identify any pelvic masses. He also testified that the size, shape and mobility of the ovaries should be documented just as with heart sounds and murmurs. In this case, rectovaginal examinations were not performed to follow any concern about fibroids; that was not the focus of her care and not the reason for repeat examinations.

The Committee concludes that the number of rectovaginal examinations (ten such examinations between 2002 and 2011) performed on this patient was unreasonable and appeared to be a product of Dr. Chung's style of overzealous practice. That he referred to the intrusive examination of a sexual body part as similar to a cardiovascular assessment and deserving of no more sensitivity indicated to the Committee that he was not considering the patient and how she might feel. It would appear he was mechanically driven to get as much information as possible regardless of whether it was relevant or not. The Committee finds this to be a failure to maintain the standard of practice.

Pregnancy was diagnosed in 2006 at which time a vaginal examination was performed; a vaginal examination was repeated in four weeks. Dr. X testified this patient had more examinations than necessary during early pregnancy. It was not disputed that Dr. Chung performs more vaginal examinations in early pregnancy than are normally performed. As stated earlier in our reasons, the Committee agrees that the conduct of repeat pelvic examinations during the first trimester of a normal pregnancy is a failure to maintain the standard of practice of the profession. This is not the care expected by the public or the profession.

Dr. X was critical of the diagnosis of fibroids and the relevance of such a diagnosis when the patient was young. The Committee's view of Dr. Chung's approach to fibroids is set out earlier in this decision. In this case, it was not a focus of her care.

The Committee finds that the failure to maintain the standard of practice as noted above also constitutes unprofessional behaviour. Dr. Chung's unthinking and mechanical behaviour speaks to an insensitivity and neglect of the patient's dignity that on its own would support a finding of unprofessional conduct.

Patient #20

The Committee finds the allegations of failing to maintain the standard of practice of the profession, and disgraceful, dishonourable or unprofessional conduct with respect to this patient not proved.

The medical record shows infrequent visits. Breast examinations were done once at age 11; March 18, twice at age 12 and once at age 18. They were recorded as early Stage II or Breasts 0. Dr. X's opinion was that none of these examinations were medically necessary, but she also noted that the breast exam at age 11 likely involved inspection only, which she considered appropriate. Dr. X testified that this patient was not at high risk. This patient was not on oral contraceptives and had no breast complaints. In Dr. X's opinion, the first medically indicated breast exam was when the patient was 20 years of age and reported onset of sexual activity and started birth control pills.

Dr. Chung testified that the breast examinations in this case could be either inspection or palpation. He denied that palpation was always done.

On cross examination, Dr. X agreed that if breast examinations were just visual they would be appropriate.

In light of the fact that the evidence is not clear as to whether or not the breast examinations were inspection only, the Committee was not prepared to make a finding

that Dr. Chung failed to maintain the standard of practice of the profession in conducting these breast examinations.

The first pelvic examination was performed when the patient (aged 20) reported onset of sexual activity and started birth control pills. Pelvic examination was repeated the following year, and on two more dates at two year intervals. Breast examinations were performed concurrently at these appointments which were noted to be general assessments.Dr. X was of the opinion that none of the pelvic examinations were medically unnecessary.

After review of the particulars of this patient, the Committee was not persuaded that Dr. Chung failed to maintain the standard of practice of the profession or engaged in disgraceful, dishonourable or unprofessional conduct. The Committee based its decision on the lack of clarity as to whether the breast examinations performed included palpation as well as inspection (Breasts 0) and the lack of a clear standard as to the appropriate frequency of examinations. In respect of pelvic examinations, the Committee noted that the medical record clearly indicated that pelvic examinations began at a time when the patient was sexually active.

Summary

As noted earlier, the Committee was faced with a spectrum of examinations performed by Dr. Chung, which varied from routine care to those which were clearly unjustifiably zealous.

This range of behaviour clearly included a number of patients where the examinations performed constituted a failure to maintain the standard of practice. The Committee in making its findings in this case considered the standard of practice to be the standard at the time of the examinations and not the standard which applies today.

The Committee was of the view that in many instances Dr. Chung was overly diligent, but did not fail to maintain the standard of practice of the profession. The Committee

does not condone this overly diligent approach. Physicians are rightfully expected to achieve a reasonable balance which requires sensitivity to a patient's dignity and expectation for privacy. This needs to be factored along with the need for an intrusive examination. While the Committee does not find a failure to maintain the standard of practice in these cases was proved in the circumstances, it does not endorse Dr. Chung's behaviour as best practice at the time.

(ii) Did Dr. Chung engage in in disgraceful, dishonourable or unprofessional conduct with respect to any of the nineteen patients identified in the s. 75 investigation of Dr. Chung's practice?

The allegation of disgraceful, dishonourable or unprofessional conduct as it applies to excessive or unnecessary examinations is addressed above in conjunction with the allegation of failing to maintain the standard of practice. The Committee found Dr. Chung's conduct as described to be unprofessional.

There were no allegations in the Notice of Hearing of disgraceful, dishonourable and unprofessional conduct by Dr. Chung regarding privacy issues related to the s.75 patients. However, the Committee comments as follows.

Dr. X testified that it is important to provide a cover in the interest of patient dignity and comfort. The Committee concluded that Dr. Chung was not consistent in regards to ensuring his patients were properly covered. He testified that he provided the folded cover and expected patients to use it. The Committee accepts the evidence of Patient 14 that the privacy curtain was not closed and that she was not appropriately draped.

Dr. Chung displayed an ignorance of, or chose to disregard, simple and expected office procedures designed to respect the privacy of patients. He seemed to think it was alright and his obligations ended as long as his patients did not object. He did not recognize his professional responsibility to ensure appropriate steps were followed to respect the

privacy of his patients. He did not appreciate that the degree of authority which he held could be intimidating to patients.

(iii) Did Dr. Chung engage in sexual abuse or sexual impropriety with respect to any of the 19 section 75 patients?

The College asks the Committee to make a finding of sexual abuse/sexual impropriety based on the unnecessary breast, pelvic and rectal examinations which it alleges violated patients' sexual integrity and privacy.

The Committee finds that Dr. Chung, although misguided and clearly mistaken, genuinely believed that all his examinations were necessary. The basis of his belief was the training he had received and he relied on that early training and outdated literature. The Committee accepted that he believed his examinations were in the best interest of his patients. Although he was wrong in this, the Committee accepts that in the circumstances, the examinations he conducted were not of a sexual nature. As indicated above, sexual intent or motivation is not a necessary component of a finding of sexual abuse or sexual impropriety. In the circumstances of Dr. Chung's practice, examinations were sometimes performed mechanically and contrary to the standard of practice of the profession, as a result of his outdated views. The Committee characterized some of his practices as overly diligent or zealous, unprofessional and contrary to the standard of practice, but has concluded in the circumstances that he had not engaged in touching of a sexual nature.

Accordingly, the Committee finds the allegations of sexual abuse or sexual impropriety not proved in any of the 19 cases. While Dr. Chung erred in being excessively thorough in his examinations, the Committee finds that his examinations were not of a sexual nature or sexual character.

Part 3: Is Dr. Chung incompetent as defined under the RHPA?

To make a finding of incompetence under s. 52(1) of the Code, the Committee must be satisfied that the member's professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the member is unfit to practise or that his practice should be restricted.

At issue in this matter is over scrupulousness which resulted in excessive examinations in a number of cases. Unquestionably, Dr. Chung exceeded reasonable limits as reflected in the Committee's findings. The Committee concluded that Dr. Chung, a product of older teaching, did not modify his practice as he should have. Out of this was born a habit which was difficult for him to discard. He was wedded to a medical model of care focusing on illness and subordinated patient sensitivities to obtain every bit of information he could. This simply is not acceptable practice today.

The Committee was most concerned with Dr. Chung's dated practice of repeated examinations in pregnancy and his cavalier attitude towards examining virginal females. While attempting to serve his patients, he was thoughtless, insensitive and disrespectful. This is a significant shortcoming.

The Committee concluded that although Dr. Chung's judgment was not always appropriate to the particular circumstances of his patients, these failings did not reach the level necessary to support a finding of incompetence. Furthermore, Dr. Chung demonstrated some insight in his evidence in testifying that he would not do today the number of examinations that he did in the past.

Summary of the Findings

With respect to Dr. Chung's care of Ms A, the Committee finds that Dr. Chung committed acts of professional misconduct in that:

1) he failed to maintain the standard of practice of the profession in his care and treatment of Ms A; and

2) he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

With respect to the section 75 patients, the Committee finds that Dr. Chung committed acts of professional misconduct in that:

1) he failed to maintain the standard of practice of the profession in the cases of Patient #3, Patient #4, Patient #8, Patient #9, Patient #10, Patient #14, Patient #16, Patient #17, Patient #18 and Patient #19; and

2) he engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional in the cases Patient #3, Patient #4, Patient #8, Patient #9, Patient #10, Patient #14, Patient #16, Patient #17, Patient #18, and Patient #19.

The Committee requests that the Hearings Office schedule a penalty hearing pertaining to the findings made at the earliest opportunity.

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Stanley Bo-Shui Chung, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names and any information that could disclose the identity of the patients referred to during the course of the hearing. This includes patients identified in oral or documentary evidence. Identifying information includes, but is not limited to, the initials of patients, the name of the Church they attend, their place of residence or place of employment under 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.

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

> Every person who contravenes an order made under … section 45 or 47… is guilty of an offence and on conviction is liable,
>
> > (a) in the case of an individual to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence; or
> >
> > (b) in the case of a corporation to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence.

Indexed as: Chung, S. (Re)

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

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

B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. STANLEY BO-SHUI CHUNG

PANEL MEMBERS:

DR. J. WATTS (CHAIR)
D. GIAMPIETRI
DR. P. CHART
M. FORGET

Penalty Hearing Date: April 14, 2014
Penalty Decision Date: June 13, 2014
Release of Written Reasons: June 13, 2014

PUBLICATION BAN

PENALTY AND REASONS FOR PENALTY

The Discipline Committee (the "Committee") of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on April 8 to 11, April 22 to 26 and May 3, 2013. At the conclusion of the hearing, the Committee reserved its decision on finding.

On February 10, 2014, the Committee delivered its written decision and reasons which sets out the finding that Dr. Chung has committed acts of professional misconduct in that:

1) he failed to maintain the standard of practice of the profession; and
2) he engaged in conduct relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as unprofessional.

The Committee heard evidence and submissions on penalty and costs on April 14, 2014, and reserved its decision on penalty.

The Committee's Decision of February 10, 2014

Dr. Chung was a family physician whose practice was predominantly office gynaecology and obstetrics. Dr. Chung resigned from the College of Physicians and Surgeons of Ontario effective June 1, 2012. Ms A was a patient who attended Dr. Chung from March 1987 until her last visit in September of 1991. Based on a complaint made by Ms A to the College in January 2010 and a subsequent broader investigation of Dr. Chung's practice, Dr. Chung was referred to the Discipline Committee with allegations of failing to meet the standard of practice of the profession, incompetence, sexual impropriety, sexual abuse, and disgraceful, dishonourable or unprofessional conduct.

While making no finding of sexual abuse, sexual impropriety, or incompetence, the Committee found that allegations of failing to maintain the standard of practice and engaging in disgraceful, dishonourable or unprofessional conduct were proved against Dr. Chung.

In its decision of February 10, 2014, the Committee found that Dr. Chung carried out inappropriate and excessive intimate examinations because of a misguided and mistaken

view that they were necessary. The Committee found his methods as noted in its decision and reasons on finding to be dated, and in certain cases constituted a failure to maintain the standard of practice of the profession.

The Committee determined that Dr. Chung performed a spectrum of examinations which varied from routine examinations to those which were clearly unjustifiably zealous. His examinations in many instances appeared unthinking and mechanical.

The Committee also found that Dr. Chung engaged in unprofessional conduct when he disregarded his patient's sensitivity, in performing frequent and unnecessary examinations and by failing to ensure appropriate covering/draping. In doing so he demonstrated a clear lack of awareness and was not respectful of his patient's right to dignity and privacy.

Victim Impact Statement

The Committee accepted a Victim Impact Statement from Ms A which was read into the record. This Statement reflects the direct impact of Dr. Chung's professional misconduct in this matter on Ms A and her family.

The Statement articulates the difficulty that patients with complaints against a physician can have in deciding to make a complaint.

> "No one should think this was a simple decision. I wrestled with the possibility that I made the wrong decision by launching my complaint. I wondered if it really was warranted or if it would be taken seriously. I knew this would be a risky move for me because I would ultimately be under scrutiny for opening this can of worms. My motives and integrity would likely be questioned. I would likely have to testify in person and stare into the faces of others wanting to see the ugly face of the woman out to get their highly respected Doctor."

Further, the statement expresses the personal burden on Ms A and patients in her position who have been subjected to inappropriate treatment or behaviour by physicians.

> "To this day, I vividly remember many of the appointments I attended at Dr. Chung's office. I remember how shy and awkward I felt, but also how I wanted to seem brave and mature by not objecting to any of the examinations or question the doctor's authority."

The Committee recognizes the courage of Ms A to come forward with a public airing of this complaint.

Evidence on Penalty

At the penalty hearing, the Committee received an Undertaking signed by Dr. Chung dated April 9, 2014. In this Undertaking, Dr. Chung has agreed in the face of the Committee's findings never to apply or to reapply for registration as a physician in Ontario or in any other jurisdiction.

The Committee also received the details of two prior Complaints Committee Decisions and Reasons. There were two separate complainants and the specifics will be referred to later in our reasons. These matters were resolved June 10, 2002, by a caution and referral to the Quality Assurance Committee (QAC).

Further, counsel for Dr. Chung placed a brief of documents before the Committee which outlined the unfolding of negotiations with the College prior to the hearing and excerpts from the press.

Joint Submission on Penalty and Costs

Counsel for the College and counsel for the member made a joint submission as to the appropriate penalty, consisting of a reprimand and costs for one day of hearing. The Committee notes that Dr. Chung has not practiced since June 2012, and that he is bound by the undertaking of April 9, 2014, that he will never reapply for registration as a physician in Ontario or any other jurisdiction.

DECISION AND REASONS FOR PENALTY

The Committee considered the evidence before it including the evidence in the hearing on finding, the submissions of counsel for the parties, the case law referenced and the circumstances and nature of the misconduct.

The Committee is aware that it has a discretion to accept or reject a joint submission on penalty. The Committee is also aware that the case law indicates that the Committee should accept a proposed joint submission, unless to do so would be contrary to the public interest and bring the administration of justice into disrepute.

It is accepted by the Committee that the penalty order should be commensurate with the member's misconduct and reflect accepted penalty principles. The Committee is of the view that unequivocal denunciation of the specific misconduct, general deterrence and protection of the public are of particular importance and directly apply in this matter.

The Committee was troubled by Dr. Chung's exploitation of his position as a trusted family physician and his failure to take into consideration patient sensitivities. Patient vulnerabilities, compliant nature and inexperience enabled him to act far more intrusively than accepted standards would allow. An example of the seriousness of the misconduct from the broader Section 75 investigation is Patient #17. Dr. Chung repeatedly acceded to a mother's request for "virginity" testing of her developmentally challenged daughter. This Committee views such testing as offensive and intolerable in modern medical care. A physician should not accede to such requests.

At the penalty hearing the Committee had before it detailed decisions of the Complaints Committee made in 2002 regarding Dr. Chung. Even though the information was not tested as it would be in a hearing and is not part of Dr. Chung's disciplinary record, it is disturbing to note the striking similarity of the issues raised in these documents and the current findings. At that time, concerns were expressed about the number of internal examinations Dr. Chung was performing and his insensitivity to privacy issues. The dated nature of the reference texts cited by Dr. Chung, even then, was disturbing to the Complaints Committee. Concern with respect to then current standards prompted the

referral to the Quality Assurance Committee and Dr. Chung was required to attend for a caution.

In 2002, Dr. Chung was aware that he performed more internal examinations than other physicians; further, he offered that he does not conduct as many internal examinations as he did in the past. The Committee is dismayed by the degree to which the issues in 2002 mirrored the findings made in February 2014. Dr. Chung was either dismissive of the opinion of his peers or he was intransigent and purposely ignored the advice given. The consequence was a failure to amend his practice. It is clear that Dr. Chung knew in 2002 that his practice was of concern and he did nothing of significance to change.

The Committee is also dismayed by Dr. Chung's repetitious conduct. Examples of frequent unnecessary internal examinations and lack of sensitivity to patients' dignity and privacy are clear in the evidence after 2002 (Patients #3, #4, #8, #9, #10, #16, #17, #18, #19). Dr. Chung cited the same out-dated texts to this Committee that he had referred to in 2002 in support of his out-dated practices.

The Committee considers the above to constitute a significant and compelling aggravating factor. The Committee also took into account that Dr. Chung has resigned from the College, no longer holds a Certificate of Registration and has signed an undertaking with the College never to reapply in this or any other jurisdiction. This is a greater sanction than the Committee itself has jurisdiction to order. Accordingly the Committee is satisfied that Dr. Stanley Bo-Shui Chung will never again be in a position to provide medical care to patients. Given the current findings and the absence of change over ten years, the Committee would be satisfied with no less in the circumstances of this case. Protection of the public is thus achieved.

The findings and penalty in this matter should clearly inform the profession that such conduct will not be tolerated and that serious consequences will follow this type of behaviour.

The Committee therefore accepts the proposed joint submission on penalty and costs as an appropriate disposition in this matter.

ORDER

Therefore, the Discipline Committee orders and directs that:

1. Dr. Chung appear before the panel to be reprimanded.

2. Dr. Chung pay costs to the College in the amount of $4,460.00 within thirty (30) days from the date of this Order.