

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Rabi, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of Patient A or her child or any information that could disclose their identity under subsection 47(1) 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: Ontario (College of Physicians and Surgeons of Ontario) v. Rabi, 2020 ONCPSD 15

**DISCIPLINE COMMITTEE
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**
which is Schedule 2 of the ***Regulated Health Professions Act, 1991***,
S.O. 1991, c. 18, as amended.

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ADEGBENGA OLUWASEUN RABIU

PANEL MEMBERS:

**DR. ERIC STANTON (Chair)
MR. PETER PIELSTICKER
DR. PEETER POLDRE
MR. JOHN LANGS
DR. JOANNE NICHOLSON**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

**MS. MORGANA KELLYTHORNE
MS. SIMMY DHAMRAIT-SOHI**

COUNSEL FOR DR. RABIU:

**MS. MEREDITH JONES
MS. REEM ZAIA**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

**MS. ZOHAR LEVY
MR. DAVID ROSENBAUM**

Hearing Dates: December 16 and 17, 2019, and January 15, 2020
Decision Date and Release of Reasons Date: April 8, 2020

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter on December 16 and 17, 2019, and January 15, 2020. At the conclusion of the hearing, the Committee reserved its finding.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Adegbenga Oluwaseun Rabiou (“Dr. Rabiou”), a member of the College, committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”) in that he engaged in sexual abuse of a patient;
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
3. under paragraph 1(1)1 of O. Reg. 856/93, in that he contravened a term, condition or limitation on his certificate of registration.

RESPONSE TO ALLEGATIONS

Dr. Rabiou denied the allegations in paragraphs 1 and 2 of the Notice of Hearing but admitted that he had contravened a term, condition or limitation on his certificate of registration as set out in paragraph 3 of the Notice of Hearing.

BACKGROUND

Dr. Rabiou is a pediatrician practicing in Ottawa. The terms of his certificate of registration with the College permitted him to practice pediatrics only. He was also required to have a clinical supervisor. The allegations of sexual abuse in this case arise from alleged conduct by Dr. Rabiou in relation to Ms. A, an adult, during a single clinical encounter in April 2018. Ms. A was attending a medical appointment with her infant son, and was experiencing some medical symptoms herself. Dr. Rabiou evaluated and prescribed medication for Ms. A after seeing her son. There was disagreement between the parties about whether a physical examination took place during this clinical encounter. Dr. Rabiou denied any examination, although he did acknowledge taking a history of Ms. A's symptoms and writing a prescription for antibiotics and an anti-inflammatory medication. Ms. A testified that an examination of her back, chest and breasts took place, and the College alleges that the examination was conducted and was of a sexual nature.

THE ISSUES

The issues in this case are:

1. Does Ms. A meet the definition of a patient according to the definition and factors to be considered on the encounter date in April 2018, and if so, did Dr. Rabiou engage in sexual abuse of a patient, including by:

a) inappropriate and/or sexual touching of Ms. A's body, including her breasts?; or

b) lifting or displacing her clothing without consent?

2. If Ms. A was a patient, did Dr. Rabiou engage in disgraceful, dishonourable or unprofessional conduct towards Ms. A, including by:

a) inappropriate and/or sexual touching of Ms. A's body, including her breasts?;

b) lifting or displacing her clothing without consent?; or

c) treating Ms. A, an adult, while the terms of his certificate permitted him to practice pediatrics only?

3. Dr. Rabiou has admitted that he contravened a term, condition, or limitation on his certificate of registration in contravention of paragraph 1(1)1 of O. Reg. 856/93; however, the Committee still needs to make a finding in this regard.

AGREED STATEMENT OF FACTS

Certain of the facts in this hearing were set out as follows in an Agreed Statement of Facts, which was filed as an exhibit and presented to the Committee:

1. Dr. Adegbenga Oluwaseun Rabiou ("Dr. Rabiou") is a paediatrician who currently practises in Ottawa, Ontario.

2. At all relevant times, Dr. Rabiou held a Restricted Certificate of Registration.

2015 Restricted Certificate of Registration

3. On June 18, 2015, the Registration Committee considered Dr. Rabiū's application for a certificate of registration to practise medicine in Ontario. The Committee approved Dr. Rabiū's application for a certificate of registration under the College's Restricted Registration Policy and made an Order directing the Registrar to issue Dr. Rabiū a restricted certificate with terms, conditions and limitations. A copy of the Registration Committee's decision letter to Dr. Rabiū, dated June 19, 2015, is attached at Tab A to the Agreed Statement of Facts.

4. On July 2, 2015, Dr. Rabiū was issued a Restricted Certificate of Registration with terms, conditions, and limitations permitting Dr. Rabiū to practise paediatrics at the Southbank Medical Centre, Greenstreet Medical Centre and O'Connor Medical Group in Ottawa, Ontario while under supervision coordinated by a supervisor acceptable to the College. A copy of Dr. Rabiū's Undertaking, Acknowledgment and Consent, dated June 23, 2015, is attached at Tab B of the Agreed Statement of Facts. A copy of Dr. Rocco Gerace's letter to Dr. Rabiū enclosing the Restricted Certificate of Registration is attached at Tab C of the Agreed Statement of Facts.

April 2018 – Dr. Rabiū contravened a term, condition, and limitation on his certificate of registration

5. Between approximately December 2017 and April 2018, [Ms. A's son] (DOB: July 2, 2017) was a patient of Dr. Rabiū.

6. At all relevant times, [Ms A's son] attended medical appointments with Dr. Rabiū at Southbank Medical Centre located at 3-2430 Bank Street in Ottawa, Ontario.

7. Ms. [A] is [the child]'s mother.

8. On [one date in April 2018], Dr. Rabiou saw [Ms. A's son] at a scheduled medical appointment. Ms. [A] brought [her son] to this appointment and accompanied him in the examination room. A copy of [Ms. A's son]'s patient record for [the date in April 2018] is attached at Tab D of the Agreed Statement of Facts.

9. During the appointment, Ms. [A] discussed with Dr. Rabiou concerns about her own health. She reported symptoms she was experiencing.

10. Dr. Rabiou wrote Ms. [A], an adult, a prescription for Amoxicillin and Voltaren Gel. A copy of the prescription is attached at Tab E to the Agreed Statement of Facts.

11. Dr. Rabiou did not make a clinical note of his encounter with Ms. [A] and did not bill OHIP for the encounter.

12. The terms, conditions, and limitations of Dr. Rabiou's Restricted Certificate of Registration permitted Dr. Rabiou to practise paediatrics only.

PART II – ADMISSION

13. Dr. Rabiou admits the facts specified above in paragraphs 1-12, and admits that, based on these facts, he contravened a term, condition or limitation on his certificate of registration, under paragraph 1(1)1 of O. Reg. 856/93.

THE EVIDENCE

The Committee heard the testimony of Ms. A, who was called as a witness by the College. The Committee also heard the testimony of Ms. Tasmin Djaou (a doctor's assistant), Ms. Pamela Greenberg (intake coordinator and support person employed by the College), and Dr. Rabiou, all of whom were called by counsel for Dr. Rabiou. Various exhibits were filed, including the

clinical records for Ms. A's son and several other patients seen that evening, an audit trail of the Electronic Medical Record or EMR (on the OSCAR system) for that evening, a copy of the prescription written to Ms. A by Dr. Rabiou, video, photographs and diagrams of Dr. Rabiou's office at Southbank Medical Clinic in Ottawa, a copy of Dr. Rabiou's *Curriculum Vitae*, and the details of Dr. Rabiou's restricted certificate of registration as issued by the College in June 2015. The Committee received a joint book of documents and an agreed statement of facts, as set out in Schedule 1.

Summary of the Evidence

Testimony

Testimony of Ms. A

Ms. A is a mother of two, who lives in the Ottawa area. Dr. Rabiou had been her family's pediatrician since before her son was born. During her initial testimony, Ms. A stated that on the evening of the date in April 2018, after a busy and stressful day, she took her son to a booked medical appointment with Dr. Rabiou for a concern regarding his stool, which was white in color. The baby was 9 months old. She agreed that at some point she may have mentioned that he had diarrhea, but the color of his stool was her main concern. She stated she had a trip out of Canada planned in the upcoming days and wanted to make sure her son was OK prior to travelling. She stated she was feeling very stressed and anxious prior to getting to the appointment, and that she had a pain in her chest, which she described in her testimony as a "sharp type of chest pain" and then later like a "shock". She testified that at some time that afternoon she thought she might be having a heart attack or stroke or was going to give herself a heart attack with all this stress. She stated that she planned on asking Dr. Rabiou for advice and "tips" with respect to her symptoms, but that she did not tell

any of the office staff her concerns when she checked in. She stated that her symptoms had resolved prior to coming to the office.

She checked in as usual with the receptionist, and then was taken to the room by a woman wearing a Hijab whom she recognized as Dr. Rabiou's assistant. The baby was weighed at some point during this time. She remembered waiting longer than usual to see Dr. Rabiou that evening, and thinks she may have been breastfeeding when he entered the room. After some small talk and discussion of her son's symptoms, she mentioned her own chest pain and that she thought maybe she was having a heart attack. She stated that Dr. Rabiou told her he would check the baby, and then her. She felt from the beginning that Dr. Rabiou's demeanor was off, especially when discussing the baby's intake and breastfeeding. She stated that Dr. Rabiou examined the baby, but felt this was rushed. Then, while she was putting her son back into his car seat, she stated that Dr. Rabiou stood behind her and lifted her shirt without warning. It caught her off guard, because usually the doctor will "warn" before doing an assessment, lifting shirt, or touching skin. Without warning at the time, although he did earlier say that he would check her, Dr. Rabiou palpated her waist and then shoulders, without first asking her permission but asking her throughout where the pain was located. She said, "No," responding to his questions. She stated that he then asked her to sit on the exam table, which she did, and then lie on the examination table, on her back, which she did. Again without asking, Dr. Rabiou then lifted her shirt and bra (which she initially described as a loose fitting sports bra) with one hand, and pushed between her breasts with the other hand, asking if she had pain; she again said, "No," and said "It's in my chest, it's not there...it's in my ribs". He then grabbed one breast with his hand, slid it horizontally to the other breast, again asking if she had pain. She felt his hand graze both nipples. She told him she had no pain, and at that point he asked her to sit up, and then looked in her throat with a flashlight. He told her that her throat was red, and that he would give her a prescription for antibiotics. She stated that this surprised her as she did not have any throat, cold, or flu symptoms. She stated that Dr. Rabiou then sat down, and that he appeared flushed, as if he had just had an

intimate or sexual encounter, and was sitting hunched over with his hands between his legs. She estimated that the examination took about seven minutes. She initially did not recall receiving any other medication on the prescription.

On cross examination, Ms. A stated she had never interacted socially with Dr. Rabiou and that she was not Dr. Rabiou's patient. She was asked about her initial phone call to the College on April 9, 2018, at which time she spoke to Ms. Greenberg, as well as her initial interview with college investigators on May 7, 2018.

During Ms. A's initial call to the College, Ms. Greenberg documented that Ms. A had cold symptoms, swollen tonsils and chest tightness.

However, on cross examination, Ms. A denied mentioning these symptoms to Ms. Greenberg in April 2018. She was also unclear as to the exact nature and location of her pain, and admitted to not remembering the details as so much time had transpired. At one point, she stated that Dr. Rabiou had asked her to breathe in and out during the examination, and later she denied his having done so. She also stated that while he was examining her back, she was guiding him towards the location of her pain; however, he was not able to determine its origin or location during the exam.

She testified that she felt Dr. Rabiou was attracted to her and thought she was good looking and that it was common for older African men (Dr. Rabiou is Nigerian) to be attracted to her, so she was used to feeling that way. She had had this "vibe" from Dr. Rabiou during prior appointments with her children, although she did not feel bothered by it prior to the date in April 2018.

On cross examination, Ms. A was questioned in detail about the bra she was wearing, which she again described as a sports bra; however, she stated it was old, thin and weak, more like a tank top than a traditional sports bra.

She was unable to recall when during the visit Dr. Rabiou gave her a requisition and explained the tests ordered for her son, and she was unable to remember if he left the room during the encounter. She did not recall Dr. Rabiou printing a requisition. When the transcript of her May 2018 interview with College investigators was reviewed with her, she did recall further details regarding the prescriptions, and that Dr. Rabiou recommended a gel for her chest pain after she told him that she did not wish to take antibiotics. She denied having pain elsewhere, and again denied having any respiratory symptoms.

Ms. A described, in detail, the examination room she was seen in and provided an accurate diagram of Room 5 of the clinic, which is the only room that has a sink.

Testimony of Ms. Tasmin Djaou

Ms. Djaou is a 34 year old woman who originally trained as a physician in Algeria. She does not have a certificate to practice medicine in Ontario. She had been working as a doctor's assistant at the Southbank Medical Center for approximately five years. She worked for many doctors over that time and worked for Dr. Rabiou since the summer of 2017. She left her position there in November of 2019, and now works for Public Health Ontario.

Ms. Djaou testified that her duties at the clinic included taking patients' medical history, doing vital signs, weighing babies, giving immunizations, and preparing notes, other paperwork and forms. She stated that her usual practice was to "room" a patient, introduce herself and then explain that the doctor would be in after she was done taking notes. She would then take a focused history, weight and vital signs and sometimes do some counselling. She stated that she entered her notes directly into the EMR system (OSCAR) using Dr. Rabiou's login. She testified that she did not have her own login. She stated that she was the only one who entered notes into the EMR, and that Dr. Rabiou, when he did see the patient, would jot things down in a notebook,

and never directly in to the EMR. She would transcribe his clinical notes (including the details of his examination, assessment and plan) at a later time into the EMR. She stated that she did remember seeing Ms. A's baby that evening, but did not remember the exact sequence of whether she weighed him or took the history first, and stated that she was unsure whether she had entered her notes when taking the history, or later. She was certain that Ms. A did not discuss any of her own symptoms with her that evening.

During cross examination, the EMR audit trail was reviewed with Ms. Djaou, and she agreed that there were several instances that evening where it seemed her usual practice was not followed, and she was uncertain as to the timing of her specific interactions with other patients that evening. However, by looking at the audit, she was able to say when she would have likely been with a particular patient, as she usually added her notes contemporaneously. She did agree that she often added the details of an immunization (i.e., lot #) at the end of the day, and not while in the room with the patients. Ms. Djaou was questioned about a patient who was in the room next to Ms. A's baby, and stated that she added the preventions and immunization to that patient's chart when it was opened between 20:08 and 20:09. She also stated that she would have given the immunization to that patient earlier in the day, likely shortly after documenting his weight and medical history.

Ms. Djaou testified that she was able to do any function on the EMR that Dr. Rabiou could do (as she was using his log in), including ordering laboratory tests and printing requisitions, but that she did not do so that evening.

Testimony of Ms. Pam Greenberg

Ms. Greenberg is a longstanding employee of the College, whose current job title is Intake Coordinator and Witness Support Person. She has had this position for more than 20 years. Her duties include taking the initial call from the public regarding

complaints of possible sexual abuse and supporting witnesses during their interactions with the College. Ms. Greenberg was called as a witness for the defense, and in her role as witness support person, was present for the testimony of the complainant. She testified that she spoke to Ms. A on April 9, 2018, that she would have jotted notes as she spoke to Ms. A and that the notes would have been accurate although not necessarily verbatim. She testified that she summarized the details of the call (from the notes) in a memorandum dated April 10, 2018, and that the memorandum was an accurate account of her conversation with Ms. A. The memorandum was entered as exhibit 5 and reviewed by the Committee. As documented by Ms. Greenberg, Ms. A's stated reason for the visit to Dr. Rabiou that night was her child's diarrhea. Ms. Greenberg also documented that Ms. A herself was also not feeling well, with symptoms of a cold, swollen tonsils and tightness in her chest. At that time, Ms. A told Ms. Greenberg that Dr. Rabiou lifted her top and touched and massaged her lower back, and that he then had her lie down on the table, lifted her shirt, put his hand under her bra, and began touching between her breasts asking if the area was sore. He then put his hand on her entire breast, asked if it was sore, and then did the same thing on the other side. After this, he looked in her throat, and told her it was red and then gave her a prescription.

Testimony of Dr. Rabiou

Dr. Rabiou is a 46 year old physician who received his medical degree in Nigeria in May 2000. He subsequently did further training in pediatrics in Ireland and moved to Canada with his wife and children in 2015. He received a restricted certificate of registration from the College in June 2015. This restricted certificate stated that he was to practice pediatrics only, was to have a clinical supervisor, and was required to write the Royal College (RCPSC) exams for pediatrics. He agreed that he signed an undertaking to this effect with the College prior to commencing his practice, and that he understood the undertaking. He testified that he attempted the Royal College

exams in 2016, 2017, 2018 and 2019, and has so far been unsuccessful in completing them, due to personal, medical and family issues.

Dr. Rabiou testified that he began working at the Southbank Medical Clinic in September 2015, and that he works five days a week seeing both booked and walk in patients. The clinic is shared with family physicians and specialists and has a common waiting room. He has his own reception area and clinic space, which consists of a personal office, and three examination rooms labelled as 4, 5 and 6. A diagram of the floor plan was reviewed with him (exhibit 9) and he acknowledged that the diagram was accurate. Exam room 4 was directly across from his office, and exam room 5 was the only room with a sink. Only his office had a printer on The date in April 2018.

Dr. Rabiou reviewed the usual practice at the clinic, explaining that patients would check in at the reception desk, be taken to a room by the receptionist or his doctor's assistant, who would then record the patient's weight, enter the information in growth charts, and take a history. Dr. Rabiou stated that he would usually open the patient chart in his office, review the history, and then go into the room, take a more detailed history, do a comprehensive physical examination and then formulate a diagnosis and plan for each patient. He stated that he does not generally enter any clinical notes into the EMR, except that he might do so if the clinic was busy. He explained that he has a notepad in which he writes all his notes, which he carries from room to room, and that his assistant later transcribes the notes into the EMR, after which time the paper note is shredded. He stated that he only types into the EMR for requisitions and prescriptions. He testified that the clinic uses the OSCAR EMR system, and that he had a good understanding of its use. He confirmed that he shared his user ID and password with Ms. Djaou and that she did not have her own login credentials.

In chief, Dr. Rabiou testified that on the evening of the date in April 2018, at 19:57, he entered room 4, and discussed Ms. A's baby's diarrhea and white stools, and then

took a detailed history including questions regarding the health of the rest of the family, a travel history, review of prior immunizations and past medical history of the baby, and asked specific questions regarding breastfeeding and the baby's intake. He stated that although Ms. Djaou had taken the history already, and that he had reviewed this, she was still a "junior doctor" and might miss a few things, so it was his responsibility to ensure that nothing important or relevant was missed. Dr. Rabiou stated that he then did an extensive and comprehensive examination of the baby, including central nervous system, dermatological, cardiovascular, respiratory, abdominal and genitourinary examinations. He testified that the history would have taken him between three and four minutes to complete, and that the examination would have also taken between three and four minutes. He then discussed a diagnosis of enteritis with Ms. A, and at that point he left the room at 20:08 to think about the tests needed and then print a requisition in his office. He testified that he also saw a 6 month old baby patient in the next room from 20:08 to 20:09, and explained the vaccination given to that child, the side effects and possible adverse reactions as well as follow up. He testified that he did not remember if he had given the vaccination that night, and was unclear as to whether he did an examination, although an examination was documented as "normal" on the final version of the EMR chart.

At 20:11, he added and printed a lab requisition from his office, and brought it back to Ms. A's baby's examination room. He then explained the tests ordered to Ms. A, and discussed a follow up plan. He stated that it was at this point that Ms. A asked him for a "favor", and requested antibiotics for her own cough, blocked nostrils and wrist and hand pain. He initially said no, reminding her that he was a pediatrician; however, she begged him for the prescription, and out of empathy for his patient (the baby), and the fact that the family was travelling soon, he wrote the prescription for Amoxil and Voltaren gel. He also advised Ms. A that she could wait if needed to use the Amoxil and follow up with her family doctor or the emergency department if needed. He stated that there was no need to do a physical examination of Ms. A as she was

visibly unwell and told him what she needed. He denied any mention of chest pain or shortness of breath. He then left the room at 20:17 to see a family of three patients. He did not chart the encounter with Ms. A and he did not bill OHIP for it.

On cross examination, Dr. Rabiou said that he initially did not recall the details of the evening of the date in April 2018, but when he was shown the EMR audit trail in late October or November of 2019, he was able to close his eyes and remember his encounter with the baby and Ms. A. He recalled the room she was seen in (which he stated was room 4) and the details and sequence of the other patients seen that evening. He agreed that his testimony was different in several respects from his initial response to the College in September 2018. For example, initially he stated the he had printed the lab requisition in the room with the baby and Ms. A, and did not mention that he left the room to see another patient. He testified that his memory changed regarding these facts when he saw videos of the exam rooms, which had no printers. He confirmed that he had no social relationship with Ms. A, and that he had only seen her with her children in his capacity as a physician. He again stated that there was no need to examine her as she was visibly unwell, and that he wrote the prescription as she was begging and pleading for him to do her a favor.

Credibility and Reliability

In assessing the evidence of witnesses, it is important to consider both the credibility and reliability of their evidence. It is especially so when there is an allegation of sexual abuse, as typically the only witnesses to the encounter are the complainant and the physician. Credibility relates to the honesty of the witness and their willingness to speak the truth as he or she believes it to be. Reliability relates to the accuracy of the evidence and the witness's ability to observe, recall and recount the events. The Committee used the following factors in assessing the credibility and reliability of each witness:

- Did the witness seem honest? Is there any reason the witness would not be telling the truth?
- Did the witness have an interest in the outcome of the case or any reason to give evidence that is more favorable to one side or the other?
- Did the witness seem able to make accurate and complete observations?
- Did the witness seem to have a good memory? Did any inability or difficulty that the witness had in recalling events seem genuine or did it seem made up as an excuse to avoid answering questions?
- Did the witness seem to be reporting what they saw or heard or were they putting together an account based on information from other sources?
- Did the testimony seem reasonable and consistent? Did the witness say something different on another occasion?
- Did any inconsistencies in their evidence make the main points of the testimony more or less believable or reliable? Is there an explanation for any inconsistency, and does the explanation make sense?
- What was the witness's manner or demeanor when testifying? In considering demeanour, the Committee was aware that while this is a relevant factor, there are many variables, and it did not make any findings of credibility based solely or primarily on the demeanour of any witness.

Ms. A

The Committee considered Ms. A's testimony to be credible and reliable in some but not all aspects. There were inconsistencies in her evidence with respect to both her presenting symptoms that evening, and in her description of the physical examination done by Dr. Rabiou.

With respect to Ms. A's symptoms, the inconsistencies were as follows: On April 9, 2018, she told Ms. Greenberg that she had a cold, swollen tonsils and a tightness in her chest. In May 2018, when speaking to College investigators, she described chest

pain, trouble breathing, and pain in her mid-back. In December 2019, in her evidence in-chief, Ms. A denied having any respiratory symptoms at all (despite evidence that she had discussed this with Ms. Greenberg just days after her appointment with Dr. Rabiū) and stated that her main concern was chest pain, a shock in her chest, and stress. She was dismissive of Ms. Greenberg's documentation, disputing its accuracy. As well, her testimony was ambiguous with respect to the timing of her symptoms and specifically when she actually experienced chest pain. When she was cross-examined on the point, she explained that any inconsistencies were because the events in question happened a long time ago. Her explanation was delivered in a way that appeared to brush off the inconsistencies and attempt to minimize their significance.

Although there were inconsistencies in Ms. A's evidence regarding the physical examination, she was consistent when describing most aspects of the physical examination: that Dr. Rabiū touched her back and neck (this was first described to Ms. Greenberg as massaging, and then in chief as a light gentle touch), and that he placed his fingers between her breasts and pushed on her chest wall. She was consistent in her description of him touching her breasts. However, she was inconsistent as to whether Dr. Rabiū asked her to breathe in and out during the examination. She was consistent that he looked into her throat with a flashlight, and told her that her throat was red. She denied asking for a prescription, and was consistent in her testimony that she questioned the use of an antibiotic. She initially forgot about the prescription for Voltaren gel, however she did recall on cross examination that Dr. Rabiū explained it could be used for her chest pain.

Ms. A did not feel that a description of her bra was important and was defensive and vague when she was cross-examined on this point. She described it as a "sports" bra, but clarified that it was old, loose and weak. She initially told investigators that it had a thick band and straps, and later described it as more like a cropped tank top. She initially stated that Dr. Rabiū grabbed her breasts with his entire hand, sliding one

hand under her bra, while lifting up the bra from below with the other hand. She subsequently stated that he cupped each breast with his index finger and thumb, and that as he moved his hand from one breast to the other, he grazed both nipples. She stated that although she was lying down during this part of the examination, and that Dr. Rabiou was lifting both her top and bra with one hand from the bottom, she could see what he was doing.

Given the consistencies and inconsistencies in Ms. A's testimony, the Committee accepted portions of her testimony but not all. The Committee accepted Ms. A's recollection of the sequence of events on the date in April 2018, her description of the clinic, and her diagram of room 5, as accurate and reliable. However, the Committee did not accept Ms. A's testimony describing the touching of her breasts because it was internally inconsistent and inconsistent with prior statements.

The Committee further did not accept Ms. A's description of Dr. Rabiou's demeanor and appearance after he examined her. She testified that he was flushed, sitting hunched with his hands between his legs, as if he had an intimate sexual encounter. Ms. A was not credible in this regard for a number of reasons. First, Dr. Rabiou is very dark in complexion and it is not likely that he would have visibly flushed in a manner Ms. A could have seen, as she claimed. Second, Ms. A's evidence that Dr. Rabiou's body language and demeanour was as though he had an "intimate encounter" was complete speculation on her part, and the Committee does not accept her opinion in this regard. The Committee is of the view that Ms. A's reaction to the examination and encounter was a result of her pre-conceived bias of how older African men react to her, as she testified they were often attracted to her, and that Ms. A's bias in that regard caused her to misunderstand Dr. Rabiou's actual conduct.

The Committee did not find that there was any credible evidence supporting Ms. A's claim that Dr. Rabiou used the examination as an opportunity to feel her breasts. The Committee did not consider this aspect of her testimony to be reliable, and concludes

that Ms. A misapprehended what happened, likely due to Dr. Rabiou's failure to properly communicate before, during and after the examination.

Ms. Djaou

The Committee considered Ms. Djaou's testimony to be both credible and reliable and accepted it in its entirety. Her answers to questions were clear, concise and consistent. She gave a believable account of her duties at the clinic, her usual practice, her access and capabilities on the EMR, and her role in transcription of Dr. Rabiou's notes into the chart. She confirmed that she used Dr. Rabiou's login in and password, and that she did not have her own EMR access. She confirmed that she could (although in general did not) order or print lab documents. She was firm in her testimony that Dr. Rabiou never entered notes into the EMR, that he wrote into his own notebook, and that it was her that transcribed the notes, usually at the end of the day.

Ms. Djaou agreed that she did not have an independent recollection of the sequence of events on the evening of the date in April 2018, but that she was able to discern from the EMR audit trail a logical timeline of when she was with Ms. A's baby and the other patients in the clinic that evening. She agreed that there were some deviations from the usual practice due to the fact that the clinic was very busy.

She testified that a chart entry on the chart of the patient in the next room to Ms. A and her baby, done at 20:08 pm, was done by her, and not Dr. Rabiou. She was certain of this. The Committee found this part of her testimony to be crucial and was confident in its reliability.

Ms. Greenberg

The Committee found Ms. Greenberg's testimony to be credible and reliable and accepted it in its entirety. It was clear and concise, without any inconsistencies. She

gave direct answers, without embellishment. She explained her dual role at the College as an intake coordinator and a witness support person. She acknowledged that in her role as a support person, she had been present for the testimony of the complainant Ms. A at the hearing the day before. Her explanation of her method for taking calls from a member of the public, including the fact that she took notes contemporaneously, was logical and made sense. She gave evidence that, although she did not remember exactly her initial phone call with Ms. A, her notes outlining Ms. A's report of symptoms of a cold, swollen tonsils, and chest tightness were accurate.

Dr. Rabiou

As detailed below, the Committee did not find Dr. Rabiou to be credible in several material aspects of his testimony. Much of his evidence did not make logical sense, and crucial aspects were contradicted by the testimony of Ms. Djaou, whom the Committee did find credible and reliable.

1. Dr. Rabiou's memory of the office visit with Ms. A and her baby, and his memory about the printer

In his initial response to the College, in September 2018, Dr. Rabiou stated that after he saw Ms. A's baby, he printed a requisition in the examination room, discussed it with Ms. A, and then wrote her a prescription for antibiotics for a respiratory infection. He stated that this was done to provide short term treatment if her symptoms got worse before she could follow up with her family physician. He made no mention at that time that Ms. A was demanding, begging, and pleading for a prescription. He did not mention the prescription for Voltaren at that time either. It was not until Dr. Rabiou was later shown pictures and videos of the examination rooms, showing that they did not contain printers, that he changed his version of events to state that he left the room to print a requisition in his office. He gave a convoluted explanation that the owner of

the clinic moved printers from room to room. This was not corroborated by any other evidence, and was not believable.

2. Dr. Rabiou's memory of which room he saw Ms. A's baby in

Dr. Rabiou stated that after he had the chance to review the EMR audit trail months after the events in question, he was able to close his eyes and have a visual flashback as to the exact details of the room in which he saw Ms. A's baby (he stated room 4), as well as the exact sequence of his interactions with the other patients in the clinic that night, including specifically that he saw another patient, whom he recalled was in room 5, for a one minute interval between 20:08 and 20:09. He claimed that during this one minute window, he was able to discuss in detail that other patient's six month immunization protocol, possible side effects, and reasons to follow up at the clinic. He asserted that he entered data in to the EMR at this time, and that he was the one who opened and closed the chart. When shown the audit trail, Dr. Rabiou agreed that a note was entered indicating that a systemic examination was completed. In earlier testimony in chief, he had stated that he always does a comprehensive systemic examination, and that takes between three and four minutes. When the implausibility doing all of this with the patient in the room next to Ms. A in a one minute encounter was brought up, Dr. Rabiou changed his testimony and stated that he did not do an examination. This change undermines his credibility and reliability.

3. Dr. Rabiou's usual practice

Dr. Rabiou testified as to his usual practice at the clinic. He presented himself as a caring, thorough and diligent physician who took detailed histories and performed comprehensive physical examinations on all of his pediatric patients. He stated that no patient would leave the clinic without seeing him, and that he obtained informed consent from parents before giving any injections or immunizations to their children. He was emphatic that this was his responsibility. Although he initially stated that he

did not recall the details of his visit with Ms. A's baby, he then gave a description of a detailed history and comprehensive physical examination. He agreed that there was no documentation of this in the chart, that the history was unchanged from what was entered by Ms. Djaou, and that the only note entered for the physical was "Normal". He stated that a history would take between three and four minutes, and that an examination would take between three and four minutes. He took handwritten notes regarding the history and physical examination in a notebook he carried from room to room. It was the responsibility of his doctor's assistant (Ms. Djaou) to enter those notes in the EMR. The notebook was shredded as soon as she transcribed the notes, due to concerns with patient confidentiality. On cross examination, he conceded that there were several instances where his usual practice was not followed that evening, including the fact that his doctor's assistant gave the patient in the next room his vaccination well before Dr. Rabiou saw that other patient.

4. Dr. Rabiou's use of the EMR

Dr. Rabiou placed great importance on the EMR audit trail to explain his timeline on the evening of the date in April 2018. Given that emphasis, the Committee was of the view that it could only have relied on the time stamps in the EMR to show Dr. Rabiou's whereabouts if Dr. Rabiou and Ms. Djaou had separate logins so that the Committee could identify entries by Dr. Rabiou as distinct from entries by Ms. Djaou. Dr. Rabiou argued that he simply could not have had enough time to assess Ms. A's baby and then examine his mother (Ms. A) in the manner she alleged. Ms. A testified that her exam took about seven minutes. Dr. Rabiou testified that there was no examination. Dr. Rabiou claimed the EMR log showed the visit started at 19:57, with Dr. Rabiou leaving the room to see the patient in the next room between 20:08 and 20:09, then going to his office to think about and then print the lab requisition between 20:11 and 20:14, and then returning to the room with Ms. A and her baby between 20:14 and 20:17.

All parties agreed that Dr. Rabiou shared his EMR login and password with Ms. Djaou. Apart from testimony as to usual practice, there was no concrete way to identify which entries were made by which person. The Committee concluded that the shared login information made it impossible to rely on the EMR audit trail to determine Dr. Rabiou's whereabouts and the length of time he spent with Ms. A and her son since Ms. Djaou made entries in the EMR using Dr. Rabiou's login.

5. The examination of Ms. A

As stated above, Dr. Rabiou denied any examination of Ms. A. His explanation that visually she appeared unwell, and that that was reason enough not to do an examination, is not plausible. On the one hand, he stated that he did a comprehensive examination on all his pediatric patients, even if they were well and were just there for immunizations. It is not logical or credible that, as an experienced physician, he would see someone who was visibly unwell and prescribe medication without performing any examination. The Committee did not accept Dr. Rabiou's evidence that he did not do any examination of Ms. A.

The Law and Reasons for Findings

Burden of Proof

The burden of proving the allegations in a disciplinary hearing is on the College. The standard of proof required was confirmed by the Supreme Court of Canada in *F.H. v McDougall*, 2008 SCC 53: the allegations must be proved on the balance of probabilities, by evidence that is clear, cogent and convincing.

The parties largely agreed on the legal principles to be applied in this case, and articulated substantially the same legal tests regarding the definition of sexual abuse, the factors to consider when determining whether a person is a patient, and the

definition of disgraceful, dishonourable or unprofessional conduct. The Committee has applied the principles tests set out herein, as set out in response to each of the issues identified.

1. Was Ms. A a patient and did Dr. Rabiou sexually abuse her?

Was Ms. A a patient?

Because the events in question took place prior to the amendments to the *RHPA* defining a patient, the parties agreed that the appropriate framework to apply in determining whether Ms. A was a patient are the guidelines set out in *Ontario (College of Physicians and Surgeons of Ontario) v. Redhead*, 2013 ONCPSD 18 (CanLII). The Committee considered the factors set out therein, in *Leering v. College of Chiropractors of Ontario*, 2010 ONCA 87 (CanLII), and in *Ontario (College of Physicians and Surgeons of Ontario) v. Kayilasanathan*, 2018 ONCPSD 50 (CanLII). The Committee adopts the statement in *Kayilasanathan* that the factors are not a “scorecard” and the overall nature of the interaction should be considered.

The Committee finds that Ms. A was a patient. Ms. A attended a scheduled medical appointment with her son, and during the course of the visit, brought up her own symptoms. This occurred in Dr. Rabiou’s office at the Southbank Medical Center. She knew Dr. Rabiou only as her children’s pediatrician. She knew that he was a medical doctor. There was no prior social relationship with him. She was looking for advice, and did not consider her symptoms to be urgent at the time of the appointment because she claimed her chest pain had resolved by then. She felt stressed and overwhelmed. The Committee finds as a fact, based on the evidence and credibility findings above, that Dr. Rabiou assessed Ms. A, wrote her a prescription, and gave both instructions about the use of the medication (that she could hold off on the antibiotics) and advice regarding follow up (she should see her family doctor or go to the emergency department). The Committee concludes that a doctor-patient

relationship was created on the date in April 2018 between Ms. A and Dr. Rabiou as she asked him for an assessment, he performed an assessment, provided her with treatment and discussed follow up care. There are sufficient indicia of a patient relationship as identified in *Redhead* and the other cases provided by the parties and reviewed by the Committee.

Was there sexual abuse of a patient?

Definition of Sexual Abuse

The Code defines “sexual abuse” of a patient by a member as:

1. Sexual intercourse or other forms of physical sexual relations between the member and the patient,
2. Touching, of a sexual nature, of the patient by the member, or
3. Behaviour or remarks of a sexual nature by the member towards the patient.

The Code clarifies that “sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

The Supreme Court of Canada’s decision in *R. v. Chase*, [1987] 2 SCR 293 sets out an objective test for determining whether touching is of a sexual nature: “Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer?”

Finding on Sexual Abuse

As set out above, based on its findings of credibility, the Committee accepted Ms. A's evidence that a physical examination occurred, but did not accept that the examination occurred as described by Ms. A (a lengthy examination including the purposeful cupping of her breasts and touching of her nipples). The Committee does not entirely accept either Dr. Rabiou's or Ms. A's evidence regarding the examination, but instead, accepts only the portions of each witness's evidence as described herein.

The Committee accepts Dr. Rabiou's evidence that Ms. A complained of a cough and blocked nostrils, amongst other symptoms. The Committee does not find Ms. A credible in her denial of those symptoms, given that Ms. Greenberg's memorandum described Ms. A complaining of a cold, swollen tonsils and tightness in her chest. Ms. Greenberg, a non-party to the event in question, prepared her memorandum in the usual course of her work, and it is the written record of Ms. A's complaint made most contemporaneously with the events complained of. The Committee therefore prefers Dr. Rabiou's evidence regarding Ms. A's complaints at the time of the appointment. Further, those complaints are consistent with the treatment actually provided by Dr. Rabiou, namely a prescription for an antibiotic and an anti-inflammatory.

The Committee accepts Ms. A's evidence that a physical examination took place; however, it was not persuaded that the examination was not for a clinical nature appropriate to the service provided. In particular, the Committee did not find that Dr. Rabiou touched her breasts in the manner Ms. A described, for the reasons described above when considering Ms. A's credibility. Further, the Committee does not accept that the examination was sexual in nature as it did not accept Ms. A's evidence regarding Dr. Rabiou's demeanor after the examination, and found her not to be credible with respect to other important aspects of her encounter with Dr. Rabiou as described herein. As there is no credible evidence on which a reasonable observer could conclude there was touching of a sexual nature, the College has not discharged

its burden of proving, on a balance of probabilities, that the physical exam constituted sexual abuse.

The Committee finds that the allegation of sexual abuse of a patient has not been proven and dismisses the first allegation in the notice of hearing.

2 Was Dr. Rabiū's treatment of Ms. A disgraceful, dishonourable or unprofessional?

Law on Disgraceful, Dishonourable or Unprofessional Conduct

Paragraph 1(1)33 of O. Reg. 856/93 defines an act of professional misconduct by a member as: "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."

Dr. Rabiū cited cases where the finding of disgraceful, dishonourable and unprofessional conduct was made on the basis of continuous and intentional behaviour by the member, such as *Buckley v. Ontario (College of Physicians and Surgeons of Ontario)*, and suggested that there was an element of moral failing associated with disgraceful, dishonourable or unprofessional conduct.

However, disgraceful, dishonourable or unprofessional conduct is often referred to as a broad catch-all provision, and "is intended to capture any improper misconduct that is not caught by the wording of the specific definitions of professional misconduct". Further, "conduct need not be dishonest or immoral to fall within the definition. A serious or persistent disregard for one's professional obligations is sufficient." See Richard Steinecke, *Complete Guide to the Regulated Health Professions Act* as cited in prior decisions including *Ontario (College of Physicians and Surgeons of Ontario) v. Schwarz*, 2019 ONCPSD 9, (CanLII); *Ontario (College of Physicians and Surgeons of*

Ontario) v. Fenton, 2019 ONCPSD 34 (CanLII). The Committee finds that conduct can be unprofessional in the absence of any element of moral failure.

With respect to the allegation that Dr. Rabiou engaged in disgraceful, dishonourable or unprofessional conduct by breaching the restriction on his certificate, Dr. Rabiou's counsel argued that because Dr. Rabiou has admitted to contravening the restrictions, in that he treated an adult patient, he cannot also be found to have engaged in disgraceful, dishonourable or unprofessional conduct based on those same facts. Dr. Rabiou relies on the decision in *Carruthers v. College of Nurses* (1996), 1996 CanLII 11803 (ON SC) in support of that argument. The College submitted that there is no such bar, as confirmed in *Devgan v. College of Physicians and Surgeons of Ontario*, 2005 CanLII 2325 (ON SCDC) and *Aziz v. College of Veterinarians of Ontario*. The Committee is bound by the finding of the Divisional Court in *Aziz* that where there are numerous allegations of professional misconduct arising from the facts, so long as each count has a different basis upon which the member can be found to have engaged in professional misconduct, there is no double jeopardy. The Committee does not accept that "double jeopardy" argument and finds that as a matter of law, it is open to the Committee to make findings on both the second and third allegations in the notice of hearing with respect to the breach of the term, condition or limitation.

Findings on the Allegation of Disgraceful, Dishonourable or Unprofessional Conduct

As set out above, the Committee finds that Dr. Rabiou conducted a physical examination of Ms. A, including by lifting her shirt and palpating the sternum between the breasts. While such an examination may have been medically indicated by Ms. A's complaints as documented by Ms. Greenberg, the examination was done without proper communication and without first asking Ms. A or advising her of the nature of the exam. It was done in a manner that left Ms. A feeling uncomfortable. The Committee finds that Dr. Rabiou's conduct in so doing was unprofessional.

Further, the Committee finds that Dr. Rabiú's conduct in treating an adult in light of the restriction on his license also constituted unprofessional conduct. As set out above, the Committee has found that Dr. Rabiú conducted a physical examination and assessment. It finds that in conducting examination of an adult patient and writing a prescription for her, Dr. Rabiú behaved in an unprofessional manner because he knew he was not to treat adults, and still examined and treated Ms. A in contravention of the terms, conditions and limitations on his license, in an unprofessional manner. This was a significant breach of an important limitation on Dr. Rabiú's license.

The Committee therefore finds that Dr. Rabiú engaged in disgraceful, dishonourable, or unprofessional conduct by: (1) conducting an examination of Ms. A without proper communication and in a manner that made her uncomfortable; (2) examining Ms. A and writing a prescription for her in contravention of a term, condition, or limitation on his certificate of registration.

3. Did Dr. Rabiú contravene a term, condition, or limitation on his certificate of registration?

Dr. Rabiú has admitted the allegation that he contravened a term, condition, or limitation on his certificate of registration. The Committee accepts, based on the evidence outlined above and the agreed statement of facts set out above, that Dr. Rabiú did contravene a limitation on his certificate of registration by treating an adult patient despite the fact that his practice was limited to pediatrics.

The Committee finds that this contravention is an act of professional misconduct.

In light of the Committee's finding that the College has proven the second and third allegations in the notice of hearing, 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. Adegbenga Oluwaseun Rabi, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of Patient A or her child or any information that could disclose their identity under subsection 47(1) 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: Ontario (College of Physicians and Surgeons of Ontario) v. Rabi, 2020 ONCPSD 34

**DISCIPLINE COMMITTEE
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** which is Schedule 2 of the
Regulated Health Professions Act, 1991, S.O. 1991, c. 18, as amended

B E T W E E N:

COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. ADEGBENGA OLUWASEUN RABIU

PANEL MEMBERS:

**DR. ERIC STANTON (Chair)
MR. PETER PIELSTICKER
DR. PEETER POLDRE
MR. JOHN LANGS
DR. JOANNE NICHOLSON**

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

**MS. MORGANA KELLYTHORNE
MS. SIMMY DHAMRAIT-SOHI**

COUNSEL FOR DR. RABIU:

**MS. MEREDITH JONES
MS. REEM ZAIA**

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

**MS. ZOHAR LEVY
MR. DAVID ROSENBAUM**

Hearing Date and Decision Date: June 30, 2020
Release of Reasons Date: July 29, 2020

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario (“the College”) heard this matter in Toronto on December 16 and 17, 2019 and January 15, 2020. In its decision released on April 8, 2020, the Committee found that Dr. Rabiou engaged in an act of professional misconduct, in that he engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and in that he contravened a term, condition or limitation on his certificate of registration.

On June 30, 2020, the Discipline Committee heard evidence and submissions on penalty via videoconference, and issued its order as set out at the end of this decision. These are the reasons for decision.

PENALTY AND REASONS FOR PENALTY

The following facts were set out in an Agreed Statement of Facts on Penalty which was filed as an exhibit and presented to the Committee:

1. Dr. Adegbeniga Oluwaseun Rabiou (“Dr. Rabiou”) is a forty-six (46) year old paediatrician who practises in Ottawa, Ontario. He has no prior discipline history.

Dr. Rabiou’s Current Certificate of Registration

2. Dr. Rabiou currently holds a Restricted Certificate of Registration under the College policy Restricted Certificate of Registration for Exam Eligible Candidates, with terms, conditions, and limitations permitting Dr. Rabiou to practise paediatrics at the Southbank Medical Centre and O’Connor

Medical Group in Ottawa, while under supervision coordinated by a supervisor acceptable to the College, while seeking to complete his outstanding examinations. This certificate of registration expires on September 30, 2020. A copy of Dr. Rabiou's current Restricted Certificate of Registration is attached at Tab A to the Agreed Statement of Facts on Penalty. A copy of the College policy Restricted Certificate of Registration for Exam Eligible Candidates is attached at Tab B to the Agreed Statement of Facts on Penalty.

Dr. Rabiou's Registration History

3. Dr. Rabiou was first issued a Restricted Certificate of Registration as an exam eligible candidate in 2015. On June 18, 2015, the Registration Committee considered his application for a certificate of registration to practise medicine in Ontario. The Committee approved Dr. Rabiou's application under the previous version of the policy on Restricted Certificates of Registration for Exam Eligible Candidates and made an Order directing the Registrar to issue Dr. Rabiou a restricted certificate with terms, conditions and limitations. Accordingly, on July 2, 2015, Dr. Rabiou was issued his first Restricted Certificate of Registration with terms, conditions, and limitations permitting Dr. Rabiou to practise paediatrics at the Southbank Medical Centre, Greenstreet Medical Centre and O'Connor Medical Group in Ottawa, while under supervision coordinated by a supervisor acceptable to the College, while seeking to complete his outstanding examinations. This Restricted Certificate of Registration expired on July 1, 2018.
4. On June 18, 2018, the College received an application from Dr. Rabiou for a new certificate to practise medicine in Ontario. By letter dated August 23, 2018, the Applications and Credentials Department (the

“Department”) advised Dr. Rabiou that his application for a certificate of registration authorizing independent practice was deficient because he had not obtained certification by examination by the Royal College of Physicians and Surgeons of Ontario (the “Royal College”). However, the Department advised that the Registration Committee could consider granting a restricted certificate authorizing supervised practice to a candidate eligible to take the Royal College certification exam, i.e. the same type of restricted certificate Dr. Rabiou had held until July 2018. Dr. Rabiou’s application was referred to the Registration Committee for its consideration.

5. On September 13, 2018, the Registration Committee approved Dr. Rabiou’s application for a certificate of registration under the College’s policy Restricted Certificate of Registration for Exam Eligible Candidates. The Committee made an Order directing the Registrar to issue Dr. Rabiou a new restricted certificate with terms, conditions and limitations. The letter from the Chair of the Registration Committee to Dr. Rabiou advising of the Committee’s decision, dated September 25, 2018, is attached as Tab C to the Agreed Statement of Facts on Penalty. The Committee noted the active investigation and requested that Dr. Rabiou attend Individualized Instruction in Professionalism and Medical Ethics as a pre-condition to issuance of his restricted certificate of registration. The Committee made this request in light of Dr. Rabiou’s acknowledgement that he gave a prescription to the adult complainant. On September 26, 2018, Dr. Rabiou signed an undertaking whereby, among other things, he agreed to attend Individualized Instruction in Professionalism and Medical Ethics satisfactory to the College, with an instructor selected by the College. A copy of Dr. Rabiou’s undertaking, dated September 26, 2018, is attached at Tab D to the Agreed Statement of Facts on Penalty.

6. On October 1, 2018, Dr. Rabiou was issued a Restricted Certificate of Registration with terms, conditions, and limitations permitting him to practise paediatrics at Southbank Medical Centre and O'Connor Medical Group in Ottawa, while under supervision coordinated by a supervisor acceptable to the College. This Restricted Certificate of Registration had an expiry date of September 30, 2019. A copy of Restricted Certificate of Registration issued on October 1, 2018 is attached at Tab E to the Agreed Statement of Facts on Penalty.
7. In compliance with Dr. Rabiou's undertaking, he attended three (3) instruction sessions in professionalism and medical ethics via Skype with instructor Dr. Erika Abner. A copy of Dr. Erika Abner's final report, dated January 23, 2019, is attached at Tab F to the Agreed Statement of Facts on Penalty.
8. On September 12, 2019, the Registration Committee made an Order directing the Registrar to amend the terms, conditions, and limitations of Dr. Rabiou's Restricted Certificate of Registration as an exam eligible candidate in that the expiry was extended to September 30, 2020, which is the current certificate attached at Tab A to the Agreed Statement of Facts on Penalty.

Supervision of Dr. Rabiou's Practice

9. Under the terms of his Restricted Certificate of Registration, Dr. Rabiou's clinical practice has been under the supervision of Dr. William James ("Dr. James"). Among other things, Dr. James has reviewed a selection of Dr. Rabiou's patient charts and submitted reports to the College. In Dr. James' most recent report to the College, dated May 27, 2020, Dr. James reported having reviewed ten (10) patient charts monthly for a six (6)

month period between October 2019 and March 2020, and noted no concerns. In addition, Dr. James indicated that it was his overall impression that, based on the chart reviews, Dr. Rabiou was meeting the expected clinical standard of care, displaying the expected knowledge, judgment and skill of a physician practicing in Ontario, and was practising within his scope in accordance with his undertaking (attached at Tab D). A copy of Dr. James' report to the College, dated May 27, 2020, is attached at Tab G to the Agreed Statement of Facts on Penalty.

Interim Order

10. On January 15, 2019, the Inquiries, Complaints and Reports Committee made an interim order under section 25.4 of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in this matter, which is attached at Tab H to the Agreed Statement of Facts on Penalty.
11. There are no concerns with Dr. Rabiou's compliance with the interim order.

JOINT SUBMISSION ON PENALTY

The parties jointly submitted that the appropriate penalty was an order that Dr. Rabiou attend for a reprimand, have a four month suspension of his certificate of registration, have certain terms, conditions and limitations placed on his certificate of registration, and pay costs to the College in the amount of \$29,036.00.

Although the Committee has discretion to accept or reject a joint submission on penalty, the Supreme Court has indicated that the Committee should not depart from a joint submission, unless the proposed penalty would bring the

administration of justice into disrepute, or is otherwise not in the public interest (*R. v. Anthony-Cook*, 2016 SCC 43).

Penalty principles

The Committee is aware of the well-established guiding principles that are to be considered when imposing a penalty. A penalty must first and foremost ensure the protection of the public. A penalty must be such that the integrity and public confidence in the College's ability to regulate the profession is maintained.

The penalty should also serve as a specific deterrent to the member and a general deterrent to the profession, as well as providing an opportunity for the member's rehabilitation, where appropriate. Other principles considered by the Committee included denunciation of the misconduct and proportionality.

Aggravating Factors

Counsel for the College submitted that the nature of the misconduct itself should be considered an aggravating factor. The Committee agreed that there was a failure of communication and lack of consent with respect to the examination and treatment of this adult patient during the examination itself, which was aggravating. In addition, the Committee considered Dr. Rabi's failure to comply with the terms and limitations of his restricted certificate to be a serious and significant breach of the expectations of the regulator, and considered it to be an aggravating factor.

Mitigating Factors

Mitigating factors in this case were presented both by counsel for the College and counsel for Dr Rabi.

Counsel for the College and counsel for Dr. Rabiou both identified that this was the first appearance of Dr. Rabiou before the Discipline Committee, and that since the interim order of January 2019, there have been no concerns with Dr. Rabiou's practice. The Committee agreed that these were mitigating factors.

Counsel for Dr. Rabiou submitted that the misconduct occurred during one isolated and well-meaning episode on a single day, and that Dr. Rabiou has acknowledged that he made a mistake in that he provided medical care to an adult patient. He has already completed an individualized education plan in ethics and is willing to participate in further remediation as outlined in the joint submission on penalty. The Committee did agree that these facts also were mitigating factors.

Counsel for the member provided two letters of support written by Dr. James (Dr. Rabiou's clinical supervisor) and Dr. Saeed (the owner of the Southbank Medical Center where the misconduct occurred) to be considered. The Committee reviewed and considered these letters in light of the joint submission and did not find that the letters required any departure from the joint submission on penalty.

Prior Cases

A total of ten cases were presented to the Committee in the Joint Book of Authorities for review. All were considered relevant with respect to the joint submission on penalty and are summarized below.

The first, *R. v. Anthony-Cook*, 2016 SCC 43, as discussed above, articulates the law regarding joint submissions on penalty.

The next four cases were examples of members who have failed to communicate effectively with patients, failed to provide an adequate explanation and/or failed to obtain consent prior to conducting an examination.

In *CPSO v. Raja*, 2018 ONCPSD 22, the physician exposed a patient's breast during a cardiac exam. The patient was left feeling confused and embarrassed as there was no explanation or consent prior to the examination. Dr. Raja was found to have engaged in conduct that was disgraceful, dishonorable, or unprofessional, following a contested hearing with a joint submission on penalty. Dr. Raja received a reprimand, a two-month suspension, and was required to pay costs.

In *CPSO v. Noza*, 2019 ONCPSD 19, the member conducted a vaginal exam on the complainant without proper explanation, draping, or the presence of a chaperone, leaving the patient confused and upset. Dr. Noza pleaded no contest to disgraceful, dishonorable or unprofessional misconduct with a joint submission on penalty. He received a reprimand, a three-month suspension, a requirement to take the PROBE ethics course, and costs.

CPSO v. Heymans, 2018 ONCPSD 57 was an uncontested case with a joint submission on penalty. Dr. Heymans admitted to conduct that was disgraceful, dishonorable, or unbecoming. His misconduct was multifaceted and included falling asleep during the patient encounter and conducting a breast exam without explaining the need for such an exam or obtaining consent. The patient was left feeling violated and confused. He received a reprimand, a three-month suspension, and terms, conditions and limitations on his certificate of registration which included the requirement to have a practice monitor present for all professional encounters. He was also required to pay costs associated with the hearing.

In *CPSO v. Wilson*, 2016 ONCPSD 46, Dr. Wilson conducted a breast and pelvic exam on a teenager without an adequate explanation, as well as lack of proper draping and consent. He also asked repeated questions regarding her sexual history without providing a reason for needing such information. The patient was left feeling confused and overwhelmed following this encounter. This was an uncontested hearing with a joint submission on penalty, in which the member admitted that his conduct was disgraceful, dishonorable, or unprofessional. The penalty included a reprimand, a four-month suspension, and terms, conditions and limitations on his certificate of registration including an undertaking that he have a practice monitor present for clinical encounters, along with costs.

The next four cases were cases where the member contravened terms, conditions, or limitations on his or her certificate of registration, or in which there was a breach of an undertaking which the member had entered into with the College.

In *CPSO v. Mayberry*, 2017 ONCPSD 52, Dr. Mayberry had signed an undertaking with the College in 2012 where he undertook not to prescribe narcotics, benzodiazepines, or other controlled drugs. He failed to comply with the terms of this undertaking in that he issued two prescriptions for a benzodiazepine in 2015. Dr. Mayberry admitted to professional misconduct in an uncontested hearing with an agreed submission on penalty. He received a reprimand, a two-month suspension, was required to take a medical ethics course, and pay costs of the hearing.

In *CPSO v. Baranick*, 2019 ONCPSD 13, Dr. Baranick breached an undertaking with respect to his prescribing practices by renewing prescriptions for controlled substances despite having relinquished his privileges to do so. He also failed to post signs at all his practice locations regarding his prescribing

restrictions, which was part of the undertaking. This was an uncontested hearing with a joint submission on penalty. A finding of disgraceful, dishonorable or unprofessional conduct was made. Dr. Baranick received a reprimand, a one-month suspension and was required to pay costs.

CPSO v. Carroll, 2012 ONCPSD 34 is the case of a gynecologist who held a restricted certificate of registration in Ontario. He had signed an undertaking with respect to his colposcopy practice and breached this undertaking. This was an uncontested hearing with an agreed statement of facts and joint submission on penalty. The penalty included a reprimand, a two-month suspension, and costs.

CPSO v. Yazdani Borujeni, 2020 ONCPSD 25 is a recent case in which the member, a pediatrician, breached the terms of her certificate of registration by treating many adult patients over several years. She also lied on her annual renewal forms with the College, stating that she practiced pediatrics only. This was an uncontested hearing with an agreed submission on penalty. The penalty ordered included a reprimand, a six month suspension, terms, conditions and limitations on her certificate of registration, and costs.

The final case presented to the Committee in the Joint Book of Authorities, *CPSO v. Foote*, 2016 ONCPSD 17, refers to a precedent that the Committee has the jurisdiction to impose a suspension irrespective of the fact that the member may not have an active certificate of registration at the time of, or during, the period of suspension. Dr. Rabiou's certificate is set to expire on September 30, 2020, and his four-month suspension begins on July 1, 2020, so the four-month suspension will include one month after Dr. Rabiou's certificate has expired. The Committee is satisfied it has the jurisdiction to order such a suspension.

Although prior decisions of the Discipline Committee are not binding on the Committee, the Committee has accepted as a principle of fairness that like cases should be treated alike. Dr. Rabiou both failed to communicate effectively with the complainant during a clinical encounter, and contravened the terms of his restricted certificate of registration by treating an adult, when he was permitted to practice pediatrics only. Consequently, the appropriate penalty here should reflect the range of penalties in comparable cases reflecting both issues, as provided by the parties.

CONCLUSION

Central to the physician-patient relationship is effective communication. Physicians are expected to explain the rationale for their clinical actions. Failure to do so undermines the trust that patients place on the profession and can lead to confusion, mistrust, and potential harm. Dr. Rabiou's failure to comply with the terms of a restricted certificate also raises concerns regarding the governability of the member and contributes to the serious nature of the misconduct in this case.

The Committee is satisfied that, when viewed in its totality, the joint submission on penalty is appropriate and proportionate to prior decisions in cases with similar misconduct. The four-month suspension and reprimand will serve as a specific deterrent to the member, a general deterrent to the profession, and will protect the public while maintaining the integrity of profession and confidence in the College's ability to regulate its members. The terms, conditions and limitations placed on Dr. Rabiou's certificate of registration will further ensure protection of the public. The PROBE ethics course and the Saegis successful patient interactions course should assist the physician in his rehabilitation.

Costs are always at the discretion of the Committee. In this case, the parties have reached an agreement on costs and the Committee found this to be reasonable under the circumstances. The amount was determined based on sixty percent of the cost of a three day contested hearing, where the Committee found that two of the three allegations were proven, and one hundred percent of the cost of the one day penalty hearing.

ORDER

The Committee's Order with respect to penalty and costs, released on June 30, 2020 stated:

1. **THE DISCIPLINE COMMITTEE ORDERS** Dr. Rabiou to attend before the panel to be reprimanded.
2. **THE DISCIPLINE COMMITTEE DIRECTS** the Registrar to suspend Dr. Rabiou's certificate of registration for a period of four (4) months, commencing from July 1, 2020, at 12:01 a.m.
3. **THE DISCIPLINE COMMITTEE DIRECTS** the Registrar to place the following terms, conditions and limitations on Dr. Rabiou's certificate of registration effective immediately:
 - (i) Dr. Rabiou shall comply with the College Policy "[Closing a Medical Practice](#)";
 - (ii) Dr. Rabiou shall participate in the PROBE Ethics & Boundaries Program ("PROBE Program") offered by the Centre for Personalized Education for Professionals, by receiving a passing evaluation or grade, without any condition or qualification. Dr. Rabiou shall complete the PROBE Program within one (1) year of the date of this Order, and shall provide proof to the

College of his completion, including proof of registration and attendance and participant assessment reports, within one (1) month of completing it;

(iii) Dr. Rabiou shall participate in and complete the SAEGIS Successful Patient Interactions course, within one (1) year from the date of the Order and shall provide proof to the College of his completion, including proof of registration and attendance, within one (1) month of completing it;

(iv) Dr. Rabiou shall restrict his practice of medicine to paediatrics only;

(v) Dr. Rabiou shall inform the College of each and every location where he practises, including, but not limited to, hospitals, clinics and offices, in any jurisdiction (collectively his "Practice Location(s)"), within fifteen (15) days of the date of the Order and shall inform the College of any and all new Practice Locations within (15) days of commencing practice at that location;

(vi) Dr. Rabiou shall submit to, and not interfere with, unannounced inspections of his Practice Location(s) and patient charts by the College for the purposes of monitoring and enforcing his compliance with the terms of the Order;

(vii) Dr. Rabiou shall consent to the College making enquiries of the Ontario Health Insurance Plan and/or any person or institution who may have relevant information in order for the College to monitor his compliance with the terms of the Order and shall promptly sign such consents as may be necessary for the College to obtain relevant information from these persons or institutions; and

- (viii) Dr. Rabiū shall be solely responsible for payment of all fees, costs, charges, expenses etc. arising from the implementation of any terms of the Order.
4. **THE DISCIPLINE COMMITTEE ORDERS** Dr. Rabiū to pay costs to the College in the amount of \$29,036.00 within ninety (90) days of the date of this Order.

TEXT of PUBLIC REPRIMAND
Delivered September 4, 2020
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. ADEGBENGA OLUWASEUN RABIU

Dr. Rabiu:

The practice of medicine is a privilege. Similarly, it is a privilege and not a right for the profession to govern itself through the College. You were issued a Certificate of Registration with certain terms, limitations and conditions which were meant to protect the public. The public puts its trust in the governing body of our profession not only to effectively govern its members but also to protect the public interest.

It is not only the regulator's expectation but also the public's expectation that a member will comply with any terms, limitations or conditions placed upon their Certificate of Registration. However, by blatantly disregarding those terms, limitations and conditions you violated that public trust.

Actions such as yours have the potential to undermine public trust and to raise serious questions as to whether the profession is capable, through the College's regulation, of protecting the public interest. This cannot and indeed will not be tolerated.

Furthermore, in addition to demonstrating poor judgement when you made the decision to assess and treat an adult patient, you also demonstrated a failure to communicate effectively with that patient.

Communication is central to the physician-patient relationship. Physicians are expected to explain the rationale for their clinical actions. Failing to do so undermines the trust

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that patients place in the profession and can lead to confusion, mistrust and potential harm. This also cannot and will not be tolerated.

Dr Rabi, it is our expectation, in moving forward, that you will fully comply with any terms, limitations and conditions placed upon your Certificate of Registration and that, through the course work that has been ordered, you will become a more effective communicator

As this reprimand comes to its conclusion it is this panel's sincere hope that you will have learned from this experience and that you will not appear before the Disciplinary panel again.