

IN THE MATTER OF COMPLAINTS UNDER THE  
*MEDICAL PROFESSION ACT, 1981*, S.S. 1980-81, C. M-10.1  
AGAINST DR. AMJAD ALI

**College of Physicians and Surgeons of Saskatchewan**

**-and-**

**Dr. Amjad Ali**

**Before:** **Beth Bilson, Q.C. (Chair)**  
**Dr. Bruce Reeder**  
**Dr. Chris Ekong**

**Appearances:** **Bryan Salte, Q.C., for the College of Physicians and Surgeons**  
**Aaron Fox, Q.C., for Dr. Ali**

**Hearing Dates:** **October 3-5, 2012**  
**Saskatoon, Saskatchewan**

## Decision of Discipline Hearing Committee

### **NOTE – PATIENT NAMES HAVE BEEN DE-IDENTIFIED IN THIS DOCUMENT BY SUBSTITUTING [PATIENT 1], [PATIENT 2] AND [PATIENT 3] FOR THE PATIENT NAMES WHICH APPEARED IN THE FORMAL DECISION OF THE COMMITTEE**

This is the decision of a Discipline Hearing Committee established by the College of Physicians and Surgeons of Saskatchewan (the College) to consider disciplinary charges arising from complaints made against Dr. Amjad Ali.

In the Notice of Hearing circulated on September 18, 2012, the charges against Dr. Ali were listed as follows:

- 1) You Dr. Amjad Ali are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1 and/or bylaw 8.1(b)(xvi) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include some or all of the following:

- a) A female person hereinafter referred to in this charge as “Patient Number 1” was your patient;
- b) On or about the 12<sup>th</sup> day of August, 2011 you attended Patient Number 1;
- c) You remained in the room while Patient Number 1 undressed;
- d) Patient Number 1 was not provided with a sheet or other covering;
- e) You remained in the room while Patient Number 1 dressed;
- f) You asked Patient Number 1 whether she would have a love affair with you, or used similar words;
- g) You moved your face towards Patient Number 1 in such a manner that Patient Number 1 concluded that you were attempting to kiss her.

- 2) You Dr. Amjad Ali are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1 and/or bylaw 8.1(b)(xvi) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include some or all of the following:

- a) A female person hereinafter referred to in this charge as “Patient Number 2” was your patient;
- b) On or about the 25<sup>th</sup> day of August, 2011 you attended Patient Number 2;
- c) You made a statement to Patient Number 2 that she could be your lover, or used similar words;
- d) You made a statement to Patient Number 2 that she could come back to your office after work and you could suck on her breasts, or used similar words;
- e) You made a statement to Patient Number 2 that what is said in your office stays in your office, or used similar words;
- f) You made a statement to Patient Number 2 that she was pretty, very pretty, or used similar words.

- 3) You Dr. Amjad Ali are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(o) and/or section 46(p) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1 and/or bylaw 8.1(b)(xvi) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include some or all of the following:

- a) A female person hereinafter referred to in this charge as “Patient Number 3” was your patient;
  - b) In patient visits prior to June 9, 2011 you engaged in unprofessional conversation with Patient Number 3 by discussing your relationship with your girlfriend, including stating that you had a toxic relationship with your girlfriend, or words to similar effect;
  - c) In patient visits prior to June 9, 2011 you engaged in unprofessional conversation with Patient Number 3 by discussing your relationship with your girlfriend which included statements about your financial dealings with your girlfriend;
  - d) In patient visits prior to June 9, 2011 you engaged in unprofessional conversation with Patient Number 3, which included stating that you continued your relationship with your girlfriend because of the sexual relationship with her, or words to similar effect;
  - e) On or about the 9<sup>th</sup> day of June, 2011 you attended Patient Number 3;
  - h) On our about the 9<sup>th</sup> of June you asked Patient Number 3 if she was single, or words to similar effect. That question was not related to the medical treatment you were providing to Patient Number 3;
  - i) On our about the 9<sup>th</sup> of June you asked Patient Number 3 if she was dating, or words to similar effect. That question was not related to the medical treatment you were providing to Patient Number 3;
  - j) On our about the 9<sup>th</sup> of June you asked Patient Number 3 what she did on dated, or words to similar effect. That question was not related to the medical treatment you were providing to Patient Number 3;
  - k) On our about the 9<sup>th</sup> of June you asked Patient Number 3 what she did for fun, or words to similar effect. That question was not related to the medical treatment you were providing to Patient Number 3;
  - l) On or about June 9<sup>th</sup> 2011, you pulled Patient Number 3 towards you and moved your face towards her in such a manner that she concluded that you were attempting to kiss her;
- 4) You Dr. Amjad Ali are guilty of unbecoming, improper, unprofessional, or discreditable conduct contrary to the provisions of Section 46(m) and/or section 46(o) of **The Medical Profession Act, 1981** S.S. 1980-81 c. M-10.1 of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

The evidence that will be lead in support of this charge will include some or all of the following:

- a) You were found guilty of unbecoming, improper, unprofessional or discreditable conduct The Council imposed a penalty on you which included, among other things that you would remain suspended until you provided an undertaking to the College

- of Physicians and Surgeons, in a form acceptable to the Registrar that you would have a chaperone present for all examinations of adult female patients;
- b) You signed a document dated December 3, 2004 which included the following provision:  
“I, DR. AMJAD ALI, hereby undertake that I will ... Have a chaperone, approved by the College of Physicians and Surgeons of Saskatchewan present for all examinations of adult female patients.”
- c) You breached that undertaking by not having a chaperone approved by the College of Physicians and Surgeons present for your examination of Patient Number 1 on or about the 12<sup>th</sup> day of August, 2011.

At the outset of the hearing, counsel for Dr. Ali indicated that Dr. Ali had elected to plead guilty to the fourth charge related to not having a chaperone present during the examination of one of the complainants. It is therefore not necessary for this Committee to make findings concerning that charge, though Dr. Ali’s admission of guilt may have some relevance to our conclusions about the sanctions, if any, that might be appropriate in relation to the group of complaints as a whole.

### **Summary of Evidence**

#### **[Patient 1]**

The first witness called by the College was [Patient 1], who was referred to in the first and fourth charges against Dr. Ali as [Patient 1]. [Patient 1] had been seeing Dr. Ali at his walk-in medical clinic in Regina for approximately four years. In both her direct testimony and under cross-examination, [Patient 1] described a number of conditions for which she sought medical assistance. She had a back problem, for which Dr. Ali referred her to a series of specialists, and which was eventually diagnosed as spina bifida. She suffered occasionally from depression and anxiety, largely attributable to a difficult relationship with her partner. She frequently suffered from urinary tract infections, and, on August 12, 2011, the date of the events referred to in the charges, she was diagnosed with Trichomonas, an STD. In addition, she saw Dr. Ali for colds and other minor ailments.

As [Patient 1] had several recurring medical problems, she saw Dr. Ali quite often. The progress notes filed at the hearing (exhibits R-5 and R-6) indicate that in the months before August 12, [Patient 1] saw Dr. Ali on more or less a weekly basis. Over the period when she was seeing Dr. Ali, [Patient 1] was prescribed a variety of painkillers for her back problem, and indeed, according to her, her dependence on this medication became a problem. In April 2011 the pharmacy at which [Patient 1] had many of her prescriptions filled, which was adjacent to the clinic, sent a fax to Dr. Ali (exhibit R-11) drawing attention to the fact that her prescriptions for acetaminophen in the preceding month had “drastically exceeded her recommended dose.” Both she and Dr. Ali testified that he was trying different kinds of medications in an attempt to provide pain relief; these included oxycontin, to which she was allergic, different dosages of acetaminophen, and a fentanyl patch, which according to her proved to be too powerful.

[Patient 1] testified that on August 12, 2012, she went to the clinic to see Dr. Ali, accompanied by her 17-year-old daughter. She said that in July, she had had a Pap smear, and expected the results to be back. She did not remember the exact date of the Pap smear, but thought it was in mid-July. At the August 12 visit, [Patient 1] was also intending to ask Dr. Ali to provide her with prescriptions which would last her until she was settled in Ontario, where she was planning to move.

[Patient 1] said that she had seen Dr. Ali on August 8 as well, and might have asked him at that time whether the Pap smear results were back, though she did not recall that specifically. The primary reason

for that visit was that she was having problems with acid reflux, and she was diagnosed as having an ulcer.

On August 12, [Patient 1] recalled that when she went to the clinic, she approached the clinic staff member on reception, Colleen Normand, and asked to see Dr. Ali. Her name was put on the list to be seen by the doctor. [Patient 1] said that, although a member of the clinic staff might in the past have called her and asked her to come in, she did not remember this happening; she would usually check in at the clinic to see if test results were back. She thought she had asked Ms. Normand whether the results of the Pap smear were back. She recalled that she was again experiencing discomfort which she attributed to a possible urinary infection, and that Ms. Normand gave her a cup to provide a urine sample. In her experience, she said that urine samples were sometimes tested at the clinic, and on other occasions were sent to a lab off-site to be tested. She said that she did not normally have extensive discussions with Ms. Normand about her medical issues, as it was “none of her business.”

[Patient 1] said that when the Pap smear was taken in mid-July, a member of Dr. Ali's staff had been present. She recalled being on a table, with her feet in stirrups, while something was inserted in her vagina. She testified that her experience on August 12 was different in some respects. She said in cross-examination that she was placed initially in Dr. Ali's office. He told her that the Pap test revealed that she had Trichomonas, and that he would need to take a swab. She said that she did not recall him mentioning at any point that he had observed any vaginal discharge. They went into an examining room. Dr. Ali told her to strip from the waist down, and when she had undressed, he told her to lie on the examining table. She was not covered with a sheet. Dr. Ali then used a Q-tip or similar swab, and, as she described it, “just waved it in my vaginal area,” or gave it a “quick back and forth.” He then asked her to dress, while he was still present, and then they returned to his office. In cross-examination, [Patient 1] said that when they went to the office, her daughter C.L. was sitting there; [Patient 1] asked her to wait outside while she and Dr. Ali had their discussion. [Patient 1] also described this slightly differently, stating that C.L. was not in the office when she and Dr. Ali went there, but that she was in the hallway when [Patient 1] opened the door after their discussion. [Patient 1] said that although she thought the process for taking the swab was “odd,” she did not register it as inappropriate at the time.

When they sat down in his office, [Patient 1] said that Dr. Ali had the swab in a plastic bag, with the “blue form” still to be attached to it. They reviewed her Pap smear result, and talked about the appropriate medication for the Trichomonas. They also talked about what prescriptions she would need for her move to Ontario. She asked him if he could increase her dose of oxycontin to three tablets per day, but he said he would leave it at two.

When they had finished discussing her medical issues, she stood up and prepared to leave the office. She testified that Dr. Ali also stood up, came around to her side of the desk, and said, “Can I ask you something?” He then asked her if they could have a love affair, and tried to kiss her; she leaned away to prevent him making contact. She said she was stunned and scared by this, and wanted to get out of the room. She opened the door, and her daughter C.L. was standing outside in the hallway.

[Patient 1] testified that her daughter had also come to the clinic to see Dr. Ali because she had a back problem. [Patient 1] said she had arranged for them to be seen separately because she regarded her medical issues as sensitive and did not want her daughter to be present when they were discussed. [Patient 1] said, however, that because of Dr. Ali's behavior towards her, she decided to remain with C.L. while Dr. Ali was conducting his examination. Dr. Ali did conduct an examination of C.L., which consisted of palpating her lower back. The examination, which took place in his office, did not take long, and then [Patient 1] and C.L. left the office and the clinic.

In cross-examination, [Patient 1] was asked why she had not mentioned that her daughter was present in the hallway and in the office in the affidavit she had filed with her complaint. [Patient 1] said she thought she only had to describe the interaction between herself and Dr. Ali, and did not think the presence of her daughter was relevant. She denied that she was hoping that no one would remember that C.L. had been in the vicinity when the events occurred that were the basis for [Patient 1]'s complaint.

[Patient 1] said that she had usually had her prescriptions filled at the Shoppers Drug Mart adjacent to the clinic. Since the pharmacists there, as mentioned above, had raised some questions about the amount of drugs being prescribed, she decided to have the prescriptions filled at a pharmacy at the Normanview Mall. When she was having her prescriptions filled, a short time after she left the clinic, she told the pharmacist of the events that had occurred with Dr. Ali; she said she was in tears and in an emotional state. She said she did tell the pharmacist that Dr. Ali had asked her to have a love affair, and denied she had added this as an embellishment at a later time.

[Patient 1] said that on August 12, she also phoned Colleen Normand at Dr. Ali's clinic, and they arranged to have coffee one or two days later. When she met Ms. Normand, she told her about what had occurred with Dr. Ali. She also asked if the swab Dr. Ali had taken had been sent off, and was told by Ms. Normand that it hadn't been. She understood that the swab was not found till some time later.

[Patient 1] said that she had had no previous complaints about doctors, and up to this point, she had trusted Dr. Ali. She did not think that her experience with Dr. Ali on August 12 had any direct impact on her health, but it left her uncertain about what to do, and she was "scared and disgusted" by what had happened. She said that her relationship with Dr. Ali prior to August 12 had been fine. She was not aware of any of Dr. Ali's personal problems. She saw pictures of his children in his office, and knew they lived in Toronto, but did not know anything more than that. She did not ever hear Dr. Ali "yell" at his staff.

### **Janet Kelly**

The second witness for the College was Janet Kelly, who is a pharmacist at the Shoppers Drug Mart in the Normanview Mall where [Patient 1] went to have her prescriptions filled on August 12. She testified that [Patient 1] came to the pharmacy late in the afternoon of August 12, and asked to speak privately to a pharmacist. They used a private office for this conversation. [Patient 1] told Ms. Kelly that she had just been to see Dr. Ali, and that he told her he wanted to have a relationship and tried to kiss her. She said [Patient 1] was very upset, although not crying. She had prescriptions for painkillers and antibiotics.

Under cross-examination, Ms. Kelly said that she recalled being interviewed by someone from the College in the fall of 2011. She acknowledged that, while she did tell the interviewer that [Patient 1] had told her Dr. Ali tried to kiss her, she might not have told the person interviewing her that Dr. Ali had asked [Patient 1] to have a romantic relationship. She said she did not know why she had not told the interviewer this; Ms. Kelly said she was quite rattled during the interview, and this might be the explanation for failing to mention it. She was quite certain that [Patient 1] had said to her that Dr. Ali had asked to have a relationship. She recognized that this was an important piece of information, and she remembered it quite clearly. She had never had an experience like this when counselling clients at the pharmacy. She stated that she informed [Patient 1] that she could report the matter to the police or to the College.

### **Colleen Normand**

The next witness for the College was Colleen Normand. Ms. Normand said that she had worked at Dr. Ali's clinic for approximately two years. Her duties included filing, billing, answering the phone, making schedules and arranging appointments. She stated that her employment relationship with him did not end

on good terms. She said working at the clinic was very stressful, and she did not appreciate being “yelled at.”

Ms. Normand said the posted hours for the clinic were 9 a.m. to 9 p.m., seven days a week. Dr. Das, who came in generally on Mondays, Wednesdays and Fridays, provided some coverage for Dr. Ali, but Dr. Ali often worked seven days a week, and worked long hours. There would usually be 90-100 patients per day at the clinic. After her regular hours, which were from 9 a.m. to 5 p.m. Monday to Friday, Ms. Normand would often stay to assist her husband, who was performing cleaning work, and she would sometimes be called to act as a chaperone during that time.

Ms. Normand said that Dr. Ali was not living a healthy lifestyle while she was working at the clinic. He was diabetic, and she had to remind him often to get something to eat, or, as she put it, “yell at him.” She did not think low blood sugar affected his work as a doctor, but it did make him tired and irritable. He was often irritable towards staff. Close to the time she stopped working at the clinic, Dr. Ali began to experience deafness in his right ear, which turned out to be associated with a benign brain tumour.

She acknowledged that she had told the interviewer from the College that Dr. Ali “cared more for others than himself.” She said that he didn’t turn patients away, though it meant he worked very long hours, and he spent quite a lot of time with some patients, and tended to get “off focus,” talking to them about their personal affairs. She and the other receptionist, Jennifer Stewardson, would try to get him back on track, and remind him that there were other patients waiting to see him.

Ms. Normand testified that Dr. Ali often complained to her or in her presence about his personal life. She had spoken to his wife on the phone, and met his girlfriend when she came into the office. Dr. Ali complained about his girlfriend, and she said that he might have complained to patients he was close to as well. He also complained about the College and its counsel, and stated that they were “out to get him.”

She said by the end of her time at the clinic, she began to have doubts about whether Dr. Ali was entirely competent, and she began to see Dr. Das instead of Dr. Ali as her own physician.

Ms. Normand said she had become acquainted with [Patient 1] when she came to the clinic as a patient. She said that she and [Patient 1] did sometimes talk about [Patient 1]’s personal issues when she came, as [Patient 1] often had to wait to see Dr. Ali. [Patient 1] also came in sometimes on the weekends, when Ms. Normand would often be there helping her husband to clean. She said she knew that [Patient 1] was having issues with her boyfriend. She also knew that [Patient 1] was planning to move to Ontario to help out her mother, although she didn’t know when precisely [Patient 1] intended to do this. She said [Patient 1] was always patient and calm when she came to the clinic.

On August 12, Ms. Normand recalled that [Patient 1] came to the clinic with her daughter. She knew that [Patient 1] had earlier had a bladder infection, but was not sure what she came to the clinic for on that occasion. She did not recall doing a urine test for [Patient 1]. Neither did she recall [Patient 1] specifying she was there to check on the results of her Pap test; she did not recall seeing the test results at the front of the chart, where they would normally have been placed. Ms. Normand was asked by counsel for Dr. Ali and by two members of this Committee about her recollection of whether the Pap test results were available on August 12; in each instance, she said that she could not recall whether she saw the Pap test results on August 12. Because she understood that [Patient 1] and her daughter were to be seen separately, she placed [Patient 1] in one of the examining rooms, and put C.L. in Dr. Ali’s office. Ms. Normand said one of the six examination rooms was set up to be used for intimate examinations, and it was not this examining room to which she directed [Patient 1], as she assumed she was just there to follow up on the bladder infection.

Ms. Normand said she was not aware that anything untoward happened in the interaction between Dr. Ali and [Patient 1]. She said that she did not see anyone but Dr. Ali in or around the examining room. She saw Dr. Ali come out of a different examining room with a swab, and at that point she noticed that [Patient 1] was clothed. She also noted that C.L. was standing in the hallway; she conceded that she had not mentioned this in her interview with the College in the fall of 2011, but she was certain of what she had seen. She later passed [Patient 1] in the hallway, and then [Patient 1] went back into the room where her daughter was. She said at this point [Patient 1] seemed upset about something, and did not speak to her when they passed in the hallway. Ms. Normand said she noted that [Patient 1] was “cold” towards her, and that this was not usual. The other thing she was aware of was that Dr. Ali was looking for a throat swab, but she did not know what was going on.

After [Patient 1] had left the clinic, she phoned back to say there seemed to be something wrong with her prescription. Ms. Normand said she told her to come back and have it checked, but [Patient 1] said she did not wish to return to the clinic. [Patient 1] did say she wished to speak “personally” to Ms. Normand, and Ms. Normand gave [Patient 1] her cell phone number. [Patient 1] later called her and they arranged to meet for coffee at Tim Horton’s. Ms. Normand said that they were to meet after she got off work at 5 p.m.; she told Dr. Ali that she was going to do this and, in what she viewed as an unusual gesture, he bought coffee for the staff that day.

Ms. Normand testified that when they met, [Patient 1]’s makeup was smeared and she was shaking. She “looked like she hadn’t slept.” She said [Patient 1] told her Dr. Ali had tried to kiss her, and asked “why would he think I was like that?” Ms. Normand said she told [Patient 1] she had never had that kind of experience with Dr. Ali. [Patient 1] then told Ms. Normand that Dr. Ali had asked her if they could have a love affair. [Patient 1] also asked about the swab that had been taken, and Ms. Normand undertook to look into it.

Ms. Normand said she and [Patient 1] met a second time after this, in a parking lot. She brought [Patient 1] her file from the clinic so that she could take it to Ontario. It was the practice of the clinic to charge \$25.00 for copying a file, but Ms. Normand said she was not planning to charge [Patient 1] for it. She said it was not the norm to deliver files in a parking lot, but she knew that [Patient 1] was reluctant to come back to the clinic, and she thought she would need her file if she was moving to Ontario. She wasn’t sure whether Dr. Ali knew she was delivering the file or not.

Ms. Normand said she was on holidays after this second meeting. When she returned, she raised with Dr. Ali the question of getting extra staff to ensure there would be chaperones available. She said she never spoke to him about whether there had been a chaperone for [Patient 1] on August 12. At this point, Ms. Normand said, [Patient 1] seemed to have dropped the matter. Ms. Normand testified that some time after she returned to work, the results of the swab came back, and, as she recalled, she placed them in the file.

Ms. Normand said that sometime previously there had been a directive requiring Dr. Ali to have a chaperone present during intimate examinations of women patients. The clinic had established a policy to that effect and there was a notice in the waiting room stating the policy. She said that the policy was generally followed. If she knew ahead of time that a patient was going to have an intimate examination, she would put the patient in the examination room designed for this purpose, and would arrange to be present or have someone else present. She said that sometimes she would be called in from home to act as a chaperone. After [Patient 1] filed her complaint, the policy was modified to require a chaperone to be present anytime a female patient was seeing Dr. Ali.

Ms. Normand said on one occasion Dr. Ali asked her to sign a paper attesting that she had acted as a chaperone; she refused to sign it unless she had actually been present. She said sometimes Dr. Ali would get busy and not follow the chaperone policy, and sometimes patients would refuse to have staff members

present. At some point after August 12, Ms. Normand testified that Dr. Ali said to her that he had told her to be present when [Patient 1] was being examined, but she had said she was too busy; Ms. Normand said that she would never have said such a thing, and she was certain that he did not ask her to be present on that occasion.

Counsel for Dr. Ali also asked Ms. Normand whether she knew [Patient 3], who is referred to as “[Patient 2]” in the charges laid by the College. Ms. Normand did not have a very clear recollection of when [Patient 3] had been to the clinic. She acknowledged that she had indicated in the preliminary hearing discussions with the College that [Patient 3] had been rude to the staff; as she recalled, this had something to do with the fact that she had to wait to see Dr. Ali.

Ms. Normand was also asked about the third complainant, [Patient 2], who is referred to as “[Patient 2]” in the charges. Ms. Normand said she was on vacation when the events giving rise to the allegations in the complaint took place. She did recall calling [Patient 2] to tell her that a letter had come from the Workers Compensation Board indicating that a claim filed on her behalf did not qualify as a WCB claim. This occurred after [Patient 2] had made her complaint to the College. She said that [Patient 2] hung up on her. She did not have any involvement with filing a claim, but said she did think it unusual for a claim to be filed when a person was no longer working for a company.

### **Brad Mund**

The College called Brad Mund as a witness. Mr. Mund was the Operations Manager at Wheaton Chev in Regina, and was the supervisor of [Patient 2], another of the complainants. [Patient 2] worked at Wheaton from June to September of 2011, as a clerk in the cashier office. Mr. Mund said that he had given [Patient 2] feedback in the course of her employment, and by August, when the events giving rise to her complaint took place, it was clear to him that she probably “wasn’t cut out for the automotive world.” He said that she did not have confidence about invoicing. At this time, he was still outlining to her what the expectations for her performance were rather than telling her directly that he thought it was not going to work out. She was ultimately let go on September 9. The day before, he had given her notice, and told her she could stay while she looked for other work, but she elected not to stay.

As Mr. Mund recalled, [Patient 2] had fallen on the floor at work; he thought this was four days before August 25, which was the date of her visit to Dr. Ali’s clinic. In the late afternoon of August 25, [Patient 2] came to his office, visibly upset; he said he could tell she had been crying, and her hands were shaking while she talked to him. She said she had been to the doctor to get her back checked. She had first gone to a couple of clinics where walk-ins were only seen after 5 p.m., and had then gone to Dr. Ali’s clinic.

Mr. Mund recalled [Patient 2] as saying that Dr. Ali had checked her back – not very thoroughly – and then asked her if she would like to work there. She said she had asked how much it paid. At this point, [Patient 2] told Mr. Mund that Dr. Ali said she could come and work for him and be his lover. She said her husband wouldn’t like that. Dr. Ali said he had to bring his car in for an oil change, and asked her when she got off work. She said she got off at 5:30, and he told her to come back to the clinic then; he would leave the door unlocked, and would “suck on her breasts.”

Mr. Mund said that [Patient 2] did not know what to do about this episode. Mr. Mund offered to call a doctor he knew, so she could talk to someone. He said that employees consulted him about their personal problems fairly frequently, and that [Patient 2] was “as upset as anyone else I’ve had in my office.”

Mr. Mund said he did not have any discussion with [Patient 2] about a possible WCB claim, and he never received any letter from the WCB. He did not know whether there had been any discussion of a WCB claim while she was at Dr. Ali’s clinic.

## **[Patient 2]**

[Patient 2] testified concerning her interaction with Dr. Ali on August 25. She said that she only remembered seeing Dr. Ali once before, in 2009. At that time she had been having dizzy spells. The patient records from Dr. Ali's clinic were shown to [Patient 2], which appear to indicate that she attended the clinic on August 20, 2011; the notes show that she was suffering from sinus congestion, and that she was prescribed amoxicillin. Counsel for Dr. Ali asked her whether she had been at the clinic on that date wearing sweat pants and suffering from a cold. [Patient 2] said she had not visited the clinic on that date, and that she had not recently had any sinus problems; in any case, she said she was allergic to amoxicillin. She said she had obtained a printout from the pharmacy showing medication prescribed for her during this time period (exhibit C-2); it shows that only two prescriptions from Dr. Ali, both dated August 25, one for a muscle relaxant and the other for a pain medication. The record also shows a prescription dated August 19, 2011, but this prescription was issued by Dr. Adams, her regular family physician, which she said was in relation to a pinched sciatic nerve.

[Patient 2] said she slipped on some oil at work on August 25. Since she had a pre-existing back condition, she said that she decided to go to a doctor and get her back checked. Around 2 p.m. she told Mr. Mund and one of the office staff that she was leaving to visit a doctor, and she was told she should be back by 3:30, since one of the other staff had to leave at that time. After trying three other offices where they were not accepting walk-in patients, she went to Dr. Ali's clinic. She spoke to a receptionist (whose name she didn't know), and told her that she had slipped at work and had hurt her back. She couldn't recall if there was any discussion of a WCB claim. She had a fairly long wait and was then shown into his office. She said that Dr. Ali "poked" her back a couple of times, and then gave her a prescription. She said Dr. Ali then told her she was very pretty. She denied that she asked Dr. Ali, "Do you remember me?" She asked him if his office was hiring. Her explanation for this was that she was not particularly happy in her current job, and had thought she would start to look around for something new. She had worked as a nurse's aide before, and wanted to get back into health care. She said Dr. Ali responded that not only was he hiring, but that "you could be my lover." He indicated that he was going to Toronto to see a doctor about his brain tumour, and to visit his wife and son. He said that she should call him in about two weeks, when he would be back. He said he had a male receptionist who was not working out. Dr. Ali then said that what he said to her should not be repeated outside the office, and that she shouldn't tell her husband. He suggested she should come back after work and he would "suck her breasts."

[Patient 2] said she went back to work and went to see Mr. Mund, as she thought he had some experience with harassment issues. She said when she saw Mr. Mund, she was crying, and couldn't believe her conversation with Dr. Ali had actually happened. She had a good relationship with her own physician, and had never had any concerns with other doctors.

Mr. Mund put her in touch with another doctor, and she talked to him. She also filed a statement with the police (exhibit C-4) on the evening of August 25. Counsel for Dr. Ali asked [Patient 2] if she had told Mr. Mund that she had asked if Dr. Ali was hiring; she said that she had told Mr. Mund this, though she felt bad that he would know she was looking for another job. Counsel pointed to the statement she made to the police, which recorded her as saying to Dr. Ali "You should give me a job here," rather than just asking a question whether he was hiring. [Patient 2] said she had been upset when she filed the police statement. She had raised the issue of whether Dr. Ali had any jobs available, but had asked him the question if his office was hiring, and had not said "You should give me a job here."

Counsel for Dr. Ali also asked [Patient 2] why the affidavit she had submitted to the College (exhibit C-3) did not indicate that it was she who had brought up the issue of whether the clinic was hiring. [Patient 2] said she thought she had told Mr. Salte that she was the one who had initiated discussion on this issue, and she was not sure why the affidavit did not indicate this.

Counsel for Dr. Ali asked [Patient 2] whether she had told Dr. Ali of problems with her husbands, suggested that she had been the victim of abuse or called her previous husband a jerk. [Patient 2] said she had not discussed any of this with Dr. Ali. Counsel also asked her whether Dr. Ali had said he was happy with his current staff, and whether she was the one who had said he should fire his receptionist. She acknowledged that she might have said something like this, but she said Dr. Ali then said he had a male receptionist and he could fire him so she could have a job. [Patient 2] said she did not have any “qualms” about the idea of taking a job if the male receptionist hadn’t worked out and was fired by Dr. Ali. She said she was not sure that she had said anything specific about the male receptionist, that what she remembered was her general question about whether the clinic was hiring. Counsel for Dr. Ali suggested to [Patient 2] that she was the one who had brought up the idea of being Dr. Ali’s lover, and that she was willing to do anything to get a job other than the one she had. She denied this.

### **[Patient 3]**

[Patient 3], referred to as “[Patient 3]” in the third complaint, was called as a witness. At the time of the hearing, [Patient 3] was an intake consultant at the Saskatchewan Human Rights Commission. She had a degree in social work, and had previously worked at the Children’s Aid Society in Toronto for three years.

Before she moved to Toronto, [Patient 3] had been a patient of Dr. Das, and he had recommended that she see Dr. Ali. She had occasional colds, and problems with her back which sometimes caused her considerable pain. Her daughter had also seen Dr. Ali. [Patient 3] said that although she preferred to see Dr. Das, he retired a number of times, and once moved to a different clinic. Although he was back at Dr. Ali’s clinic in 2011, his hours were limited. Given the unpredictable nature of her back pain, she would see whoever was available at the clinic.

[Patient 3] said that once when she went to see Dr. Ali, he started talking about his experience in First Nations communities, and about his wish to assist with some of the health problems in those communities. They talked about some of the programs in First Nations communities, and she shared with him that she wanted to be like her grandfather, an advocate for First Nations people. At later appointments, he began to talk about the First Nations woman he had met in the north who had become his girlfriend. He told [Patient 3] about some of the tensions in his relationship with his girlfriend. [Patient 3] said because of her social work background, she was used to talking to people about personal issues - “used to people opening up to me,” she said - and she did give him some advice. She said her experience has been that people are “stupid about relationships” and solutions are often more obvious to an outsider. She suggested to Dr. Ali for example that it might be better to bring the relationship with his girlfriend to an end. They did discuss such issues at several appointments.

On June 9, 2011, she saw Dr. Ali because none of the treatments he had tried for her back pain seemed to be working. She had tried strong pain killers, but did not want to go on “hard” pills. A cortisone shot had given her relief for a couple of days, but she did not like needles, and wanted to seek some other solution. During this visit, she said, the conversation became rather uncomfortable for her. Dr. Ali asked her why she was still single, what she did on dates and what she liked to drink. She testified that there was no medical reason for asking these kinds of questions.

At the end of this appointment, [Patient 3] said she and Dr. Ali both got up. Dr. Ali was standing between [Patient 3] and the door of the small examining room, with a paper in his hand. [Patient 3] had her hand on the door handle, and as she moved towards the door, he pulled her towards him and attempted to kiss her. She leaned out of his way, opened the door and left the room.

Counsel for Dr. Ali put to her that in her conversation with the preliminary hearing committee from the College, she described this differently. She had said to that committee that “the door opened” and there was a male employee standing outside. [Patient 3] said if she put it this way to the committee, she did not mean that someone else opened the door. She clearly recalled that she opened the door. There was a male employees standing outside, and she did say to the committee that he might have seen something. Counsel asked [Patient 3] if she might have mistaken Dr. Ali’s move to put a chart in the door as an effort to kiss her. She said that might have been an explanation except that he pulled her towards him by her back. She said she turned her head so he couldn’t make contact with her and said, “You’re not kissing me.”

The events described by [Patient 3] occurred on June 9, 2011, but she did not make her complaint to the College of Physicians and Surgeons until September. [Patient 3] said that this was in part because she did not really know where to turn. She acknowledged to counsel for Dr. Ali that she was aware of human rights laws, and that she knew that the Saskatchewan Human Rights Commission or some professional body must deal with allegations of sexual impropriety; she admitted that, as a social worker, she ought to have been aware of the resources that could be utilized. She said, however, that it was not until she was hired by the Saskatchewan Human Rights Commission in the fall of 2011, and was having her orientation with another staff person, that she clearly understood what recourse was available. She and the other staff member were going over a number of scenarios, which included an example of an inappropriate examination by a doctor. The staff member mentioned the complaint process of the College.

[Patient 3] also said that she was embarrassed by the situation. She was afraid she might have encouraged Dr. Ali’s actions by being too friendly and by engaging in conversation about personal issues. She knew that social workers and doctors are constrained by boundaries in their professional roles, and she worried that she might have gone beyond proper boundaries in her discussions with Dr. Ali.

Counsel for Dr. Ali put a series of questions to [Patient 3] about her relationship with Aven Ross, who was later called as a witness on behalf of Dr. Ali. [Patient 3] said she knew Ms. Ross because they had worked together for Statistics Canada. Counsel asked her if she had in fact decided to pursue a romantic relationship with Dr. Ali. He asked her, for example, if she had pointed out Dr. Ali’s Cadillac to Ms. Ross and said, “Someday I’ll be driving that,” or if she had been trying to find out where Dr. Ali worked out so she could work out at the same place. [Patient 3] denied that these things had occurred. She denied asking Ms. Ross if Ms. Ross would attest that [Patient 3] had complained to Ms. Ross about Dr. Ali’s conduct around the time it occurred, to support a human rights complaint.

[Patient 3] said that she thought Ms. Ross might have bitter feelings towards her. When they were working together, [Patient 3] had been told by her supervisor that she would have to fire Ms. Ross as her assistant because she had not disclosed that she had a criminal record. Ms. Ross had explained that she honestly did not think she had a criminal record because she had been sentenced to probation, but [Patient 3] said the instructions came from her supervisor and there was nothing she could do. Ms. Ross had also been terminated from a later job, and had asked about filing a complaint with the Saskatchewan Human Rights Commission; [Patient 3] had to tell her that she could not file a complaint with the Commission because the job fell under federal rather than provincial jurisdiction.

In re-examination, [Patient 3] said that there had also been some acrimonious exchanges between herself and Ms. Ross arising from the relationship between [Patient 3]’s brother, who was 22 years old, and Ms.

Ross's son, who was 18. They had been friendly, but had then had a fight over money in which [Patient 3]'s brother was beaten up; the police became involved. [Patient 3] thought Ms. Ross's son was dealing drugs, and she did not approve of the relationship her brother had with him. [Patient 3] and Ms. Ross had at least one heated telephone conversation about these events; at the end of this conversation, [Patient 3] said she told Ms. Ross that she did not want to be called again or she would call the police.

[Patient 3] said she had always had trust issues with doctors. She had flown back from Toronto to see Dr. Das because she trusted him. Her experience with Dr. Ali confirmed her lack of confidence in doctors. She has since sought out a woman doctor.

### **Amjad Ali**

Dr. Ali testified on his own behalf. Dr. Ali said that, at the beginning of his career in Saskatchewan, he had served in a number of northern communities, before eventually moving to Regina. He first worked at the North Central Medical and Dental clinic before starting his own clinic, the Northgate Medi-Clinic, where he practiced with Dr. Das.

Dr. Ali said that he had a wife who lives in Toronto with their two children, as well as a partner from a common law relationship, who also lives in Toronto with their two children. He also has a relationship with a nurse he met in northern Saskatchewan, who lives in Tisdale.

Dr. Ali described the layout of the Northgate Medi-Clinic. At the front of the clinic, which altogether occupies 2400 square feet, there is a waiting area that will accommodate 22 people, as well as an area where charts are kept. Behind this there is a procedure room which can be used for procedures done under local anaesthetic; it is used by orthopaedic specialists who visit the clinic. There is a hallway off the waiting area; about twenty feet down this hallway there are offices for Dr. Ali and Dr. Das. Perpendicular to that hallway there is another hallway lined by six small examination rooms, about 6.5 feet by 9 feet in size. Each of these contains an examining table, three chairs, and a cupboard with a pull-out writing surface. The doors in the examining rooms open inwards.

Dr. Ali said that the posted hours for the clinic are 9 a.m. to 9 p.m., but it is often open longer because of the number of patients. Dr. Ali estimated that an average of 60 to 70 patients were seen in the clinic each day. In the period from June to August 2011, he was working virtually all of the time the clinic was open; Dr. Das came in on Mondays, Wednesdays and Fridays, and there was a locum for a short period.

There were three front-end staff who worked from 9 a.m. to 5 p.m., Ms. Normand, Ms. Stewardson and Kim Rigby. There were also two staff in the evenings, one working from 1 p.m. to 9 p.m. and the other working from 5:30 p.m. to 9 p.m.

Dr. Ali testified that his health during the summer of 2011 had not been particularly good. He was an insulin-dependent diabetic, and experienced some neuropathy in his right arm as a result. He was also suffering deafness in his right ear and some balance issues, which led to a diagnosis that he had a benign brain tumour, for which he was still receiving treatment at the time of the hearing. He said because it was so busy in the clinic, it was hard for him to eat regularly. If he had co-operation from his staff, it was possible to break for lunch; otherwise, he would experience hypoglycaemic episodes which would leave him shaking and sweating. He had trained some of his staff to help him manage his condition.

Dr. Ali said that he was also having a number of problems in his business and family life. He had financial obligations to his wife and partner and their children in Toronto, and his girlfriend in Saskatchewan was also pressing him for money. He had an ongoing business dispute with a former associate. He said the stress as a result of all this had a "terrible effect." He admitted that he sometimes

lost his temper with his staff. He was seeing physicians for his medical problems, including a psychiatrist, and, in addition to insulin, was taking some anti-depressants to help him sleep. Dr. Ali said that, at the time of the hearing, he had been off work for a while; he was going to the gym regularly and was feeling much better.

During the summer of 2011, Dr. Ali said that he did sometimes talk to members of his staff about his problems with his family. He did sometimes complain about his girlfriend; she frequently phoned him at the clinic, and members of staff might also have heard his conversations with her. He said that he also complained sometimes about the College and about Mr. Salte; he did think they were “out to get” him, though he later acknowledged they were just doing their job. Under cross-examination, he conceded that he had already gone through a disciplinary hearing and was awaiting the result; this was also on his mind. That proceeding did not involve any allegation of sexual misconduct. He had earlier made an undertaking to the College to post a sign indicating that a chaperone should be present at intimate examinations of women patients, and to adopt a policy consistent with that. This policy had been in place since about 2004. He said that one of the examination rooms was designated for these examinations, and staff members were aware that a chaperone should be provided in these circumstances. In cross-examination, Dr. Ali said that he had been through a “boundaries course” as a result of earlier interaction with the College; he understood that times of personal difficulty were particularly dangerous in this regard.

He said the chaperone policy had worked very well except for the situation involving [Patient 1]. He admitted that he had taken a swab from [Patient 1] without a chaperone present. After he heard about the complaint made by [Patient 1], he had a meeting with his staff and reasserted the policy. In cross-examination, he conceded that he had not initiated this discussion, but that it had been a requirement communicated to him by the College through his lawyer. From that day on, a chaperone was to be present at any type of examination involving a woman; in fact, the policy was subsequently amended so that chaperones were to be present when male patients were examined as well.

He thought he had been seeing [Patient 1] as a patient for about seven years. Though [Patient 1] herself only remembered seeing him at the Northgate Medi-Clinic, Dr. Ali said that he had also seen her at his previous clinic. She had a lot of medical problems, including depression and anxiety arising from her problems with her spouse, urinary tract infections, STDs and colds. She also had chronic back pain. It proved hard to identify the source of her back pain, and she was sent to a number of specialists (exhibit R-1). A neurologist eventually concluded that she had spina bifida, and a number of medications were tried to assist her with the pain. He did apply for exceptional drug status in connection with the use of fentanyl, a synthetic form of morphine. His recollection was that this application was denied, and that [Patient 1] could not sustain the expense. It should be noted that [Patient 1]’s recollection that she tried it, and found it to be too potent for her, and there is a letter in exhibit R-1 which seems to confirm that exceptional drug status was approved for its use.

Dr. Ali reviewed the progress notes from the clinic for [Patient 1] in the period leading up to August 12, 2011 (exhibits R-5 and R-6) to indicate the kinds of problems which had brought [Patient 1] to the clinic. To choose a few examples, on April 17 2011 she was reporting that the combination of Percocet and Tylenol which had been prescribed was giving her stomach pain. On May 3, Dr. Ali gave her samples of Lyrica, a non-opiate pain medication, which he said was of help but was very expensive. On May 14, he gave her oxycontin, explaining to her that she might find that opiates upset her stomach. On June 27, Dr. Ali prescribed Tylenol 4 for a 20-day period to deal with pain in [Patient 1]’s legs. On July 8, a Pap smear was taken; the lab report (exhibit R-4) indicated that [Patient 1] had Trichomonas.

The lab report indicated that the result had been sent on July 29, 2011. Dr. Ali explained that such reports would be faxed or mailed to his office, and that the instructions to staff were to place them immediately on the files. This was not always done, although the reports would show up on the chart eventually.

A lab report dated July 11, 2011 (exhibit R-3) outlined the results of further urinalysis. Dr. Ali testified that he was concerned because the report showed some liver involvement, which he thought attributable to the drugs [Patient 1] was taking. He called her in to discuss the medications, and suggested she see a drug counselor; he was not aware whether she took this advice or not. Counsel for the College pointed out that there was no reference in the notes to this conversation; Dr. Ali responded that, given the number of patients he sees, it is impossible to note every detail on the charts. Counsel also pointed out that the caution from Shoppers Drug Mart (exhibit R-11) about [Patient 1]'s overuse of acetaminophen came in April, but Dr. Ali continued to prescribe it for her until July when the liver function tests arrived; Dr. Ali replied that he was concerned about her consumption of medication, but she continued to request it.

Dr. Ali said that on August 12, he recalled being told that [Patient 1] was in one of the examining rooms. Ms. Normand informed him that she had received a text from [Patient 1] saying that she was having some vaginal discharge. In cross-examination, he acknowledged that there was no indication in the notes of this request from [Patient 1]. He said that this kind of condition would usually mean that a patient would be placed in examining room number 6, which was set up for intimate examinations, In this case Ms. Normand informed him that [Patient 1] was in examining room number 1. He proceeded to see her there because he thought taking a swab would be a very brief process. When he went into the examining room, [Patient 1] started to undress; Dr. Ali told her not to do this. He then left the room to obtain a swab. When he returned, she was lying on the examining table with the clothes on the lower part of her body removed. He did the swab, and told her to get dressed and meet him in his office. At this point, Dr. Ali testified, he encountered a member of staff in the hallway and realized he should have waited for a chaperone before examining [Patient 1].

Dr. Ali admitted that he “fell down on the job” by not getting a chaperone to be present at this examination. He said he was usually “anal” about ensuring that a chaperone was present. In this case, however, it was later in the day, and he had not yet had any lunch. He said when he examined [Patient 1], he identified the vaginal discharge and taking a sample was a very brief process. He put the swab in the container and labeled it, and obtained a blue form to go with it (exhibit R-7). He admitted that this test was not noted on the chart.

Dr. Ali said he then went to the office and met [Patient 1] there. He said that he had not seen the report with the diagnosis of Trichomonas until this time; it was on his desk when he went to the office. Under questioning from a member of this Committee, he said that he might have had to call the front desk to find out if it was there; he could not recall exactly whether it was in the office when he got there. He said that [Patient 1] seemed sad about the diagnosis, and he tried to comfort her. He wrote her a prescription to deal with the STD, and he told her her partner should get treatment as well. She told him she was leaving the province the next day and wanted a prescription for oxycontin that would last her for a while. He agreed to give her a prescription for 40 days, although he kept the dose at 2 tablets per day instead of raising it to 3 as she requested.

At the end of the discussion, Dr. Ali testified that [Patient 1] seemed quite depressed. He assured her that she was making a positive decision and that “you’ll be OK.” As she was about to leave, he decided to give her a peck on the cheek as a goodbye gesture. Dr. Ali said since she was a long-time patient, he thought it was appropriate to make such a gesture; he thought it was a human response in the context of a relationship of long standing. He thought she had misinterpreted what he was doing. He acknowledged that it might have been better to ask her permission before trying to kiss her. She then said, “You can’t leave, you have to see my daughter.” Dr. Ali said his understanding was that [Patient 1] was concerned that her daughter might also have spina bifida. He proceeded to examine C.L., checking her back for a telltale tuft of hair and having her touch her toes to test for pain.

When he had finished examining C.L., Dr. Ali said he forgot to give [Patient 1] the swab he had prepared for her to take to the lab. He gave it to a staff member and told her to send it to the lab. His evidence was that he did not see the swab again.

Dr. Ali denied that he ever asked [Patient 1] to have a love affair with him. He said that when he heard about the complaint he was upset, and he told members of his staff that he was upset. He did nothing on August 12 to instigate a sexual relationship; he understood [Patient 1] was leaving for Toronto, and there was no discussion about seeing her again.

Dr. Ali further testified about his encounter with [Patient 2] on August 25. He said when he met her on that date, she said, "Do you remember me?" He did not recognize her, and asked why he should remember her. Dr. Ali said that his office records did indicate that he had seen [Patient 2] on a number of occasions in the past for different problems. The notes put into evidence (exhibit R-9) indicate that he had seen her in 2009. The second part of this document is a WCB form, which Dr. Ali acknowledged as being completed in his handwriting. The notes in exhibit R-9 also indicate that Dr. Ali saw [Patient 2] on August 20, and that he prescribed amoxicillin for a sinus infection, but he said that he had no recollection of that visit. In cross-examination he said that it is possible that the entry was made in the wrong chart. Sometimes notes are made several days after seeing a patient, and they may end up in the wrong place. He said that he would normally check back in the chart to see if an allergy was indicated before writing a prescription.

On August 25, Dr. Ali said he was preparing to go to lunch when a member of his staff asked him to see [Patient 2]. After she had asked him if he remembered her, she told him that she had fallen and he examined her back. He found it to be stiff, which he associated with a muscle spasm. Since he understood it to be work-related, he said he would fill out a WCB form and give her a form for a massage. Dr. Ali indicated that it was his practice to ask the patient whether a WCB form should be completed, and as he recalled it [Patient 2] agreed that a claim should be initiated. He did recall that the clinic subsequently got a letter from the WCB indicating that no claim had been made.

While he was filling out the forms, she asked if there were any jobs available, and he said she should send in her resume. At this point, she began to talk about her two husbands, describing one as a jerk. Dr. Ali said he changed the subject and started talking about why cars need oil changes. According to Dr. Ali, she then said he could fire his employees, to which he responded that he liked his staff. She said, "You could suck my breasts." Dr. Ali said he told her this was inappropriate, and that remarks of this kind could get her "kicked out" of the office. He told her she could come back in a week if she had further problems with her back, forgetting that he was planning to be away at that time. He prescribed a muscle relaxant and Tylenol for her, and recommended massage and physiotherapy. He also said she should do light duties at work.

Dr. Ali denied that he offered [Patient 2] a job, said she could be his lover, asked to suck on her breasts or told her not to tell her husband. He first found out about her complaint to the College when he received a letter asking him to come with his lawyer to meet with the preliminary inquiry committee. He said that when they met on August 25, [Patient 2] very quickly moved to topics of conversation he thought inappropriate. He said he did not volunteer any personal information, though he could not explain how she would know that he had a brain tumour unless he had told her.

Dr. Ali said that he did not have a strong recollection of [Patient 3], although his memory had been refreshed to some extent by reviewing her chart. He thought he had seen her three or four times about her back. He testified that she always seemed interested in his private life and asked him if he went out, and what he drank. He eventually said that he had a girlfriend, and that this was the only relationship he wanted; he said he felt he had to tell her this to "stop her coming on to me." They also talked about First

Nations issues he said, and about his involvement in First Nations communities. He remembered telling her that he had family in Toronto. He might have said that his girlfriend was extravagant and overbearing. He did not think he had called his relationship with his girlfriend “toxic,” a term [Patient 3] had used in her testimony.

The notes entered in evidence (exhibit R-10) indicate that [Patient 3] did visit the clinic on a number of occasions. The last entry was for the visit on June 9, 2011.

Dr. Ali said that [Patient 3] was reporting neck pain on June 9, which was new. He examined her and then sat at the desk to write out a prescription. He suggested that she might have to go back to a neurologist. As Dr. Ali recalled it, [Patient 3] then stood up and left the room. He did not recall that there was anyone standing outside the door. He did have a male employee at the time, Kim Rigby, but he did not remember seeing him there. He denied that he had pulled [Patient 3] towards him or tried to kiss her, or that he asked her about whether she dates and what she drinks. He said that his relationship with [Patient 3] was a professional one.

### **Pamela Larson**

The next witness for Dr. Ali was Pamela Larson. Ms. Larson had a full-time job with the provincial government, but she also worked in Dr. Ali’s clinic on a part-time basis three evenings a week, from 5 p.m. to 9 p.m. She did not know [Patient 1], but she was informed by Ms. Normand about [Patient 1]’s complaint on the day when Ms. Normand was going to meet [Patient 1], which would have been Friday, August 26. After she had been at work for an hour and half, Dr. Ali brought her the swab and asked her to have it sent to the lab. Ms. Larson testified that she thought Ms. Normand would be returning in the evening, or the next morning, so she put the sample on Ms. Normand’s work station with a note indicating that it was to go to the lab. Ms. Larson said usually patients take their samples to the lab, and it rarely happens that one has to be sent in from the clinic. She said that Dr. Ali apparently didn’t know that the lab was no longer open in the evenings. On the following Monday evening, she found the sample still on the front desk at the clinic.

### **Jennifer Stewardson**

The next witness for Dr. Ali was Jennifer Stewardson. Ms. Stewardson had worked as a receptionist at the Northgate Medi-Clinic from June 2011 until February 2012. When she began, her shifts were variable, but by the fall of 2011 she was working regularly from 9 a.m. to 5 p.m. Monday to Friday.

She was familiar with [Patient 1] as a patient at the clinic. She had been the chaperone for [Patient 1]’s Pap test in July; she did not know what the results were. She was working in the waiting room on August 12, although she did not register [Patient 1]. She was aware that Ms. Normand directed [Patient 1] to examining room 1 and C.L. to Dr. Ali’s office. She did not know the reason for their visit to the clinic. She was in the hallway near examining room 1 when Dr. Ali came out looking for a swab. At that point, she testified, she could see that [Patient 1] was clothed. Dr. Ali returned and closed the door to the examining room. Later she saw them both come out and go to Dr. Ali’s office. She saw Dr. Ali, [Patient 1] and C.L. all come out of Dr. Ali’s office; she thought this was about ten minutes after she had seen them go in. She saw [Patient 1] and C.L. going towards the Shoppers Drug Mart next to the clinic. Although she suspected something was wrong when [Patient 1] was reluctant to come back to the clinic to straighten out her prescription, she had no further conversation with her.

Ms. Stewardson testified that [Patient 2] had visited the clinic and seen Dr. Ali on August 20 because she had registered her. She recalled that she seemed cold and was shaking, and that she had been wearing sweat pants. Asked by counsel for the College whether it was possible to remember one patient among all

of the many who came to the clinic, Ms. Stewardson said that she had a good memory, and that [Patient 2] stood out.

She saw [Patient 2] again on August 25. She seemed healthy at that time. She said she was in a hurry. When another patient allowed her to go ahead, Ms. Stewardson moved [Patient 2] from examining room 4 to Dr. Ali's office, where she would be likely to be seen faster. Dr. Ali was already in the office, and Ms. Stewardson said he did not close the door. Ms. Stewardson said that her duties took her back and forth near the office during the time [Patient 2] was there. She did not observe all of the interaction between Dr. Ali and [Patient 2]. She said she saw Dr. Ali lift up [Patient 2]'s shirt to examine her back, and heard a couple of snippets of their conversation. She heard Dr. Ali say he was happy with his staff, and heard them talking about cars. She did not hear him saying anything about being [Patient 2]'s lover. She was monitoring Dr. Ali to keep him on task, and because the staff at the clinic knew of the complaint relating to [Patient 1], they were alert to anything that might appear inappropriate. Ms. Stewardson said that when [Patient 2] came out of the examining room, there was nothing to indicate that she was upset.

In cross-examination, Ms. Stewardson said that she had been involved in assembling information requested by the College in relation to the complaint concerning [Patient 1]. She acknowledged that since the letter from the College was dated August 29, she might not yet have seen the letter when [Patient 2] was at the clinic, but she did know about the complaint.

Counsel for the College asked if part of the reason Ms. Stewardson was suspicious of [Patient 2] was because she thought she was trying improperly to file a WCB claim. Ms. Stewardson admitted that he obtained information that [Patient 2] had been fired the day before she saw Dr. Ali and that she thought [Patient 2] was lying in order to file a claim. She said that the information that [Patient 2] in fact continued to work at Wheaton until September would not change her view of [Patient 2].

### **Aven Ross**

The final witness called on behalf of Dr. Ali was Aven Ross. Ms. Ross testified that she had been seeing Dr. Ali as a patient since 2010. She also knew [Patient 3], as they had worked together enumerating Metis and First Nations people for the census.

Ms. Ross said that [Patient 3] had asked her what she thought of Dr. Ali and she had responded that she thought of him as professional and "fatherly." Ms. Ross said that she was aware of Dr. Ali's work in Aboriginal communities. She also thought he was a fine doctor, from her experience as a patient.

Ms. Ross said that her testimony was not affected by the friction that had developed between her and [Patient 3]. She thought it was important to give evidence which would support Dr. Ali's professionalism. She said there had been a fight in her apartment between [Patient 3]'s brother and Ms. Ross' son, but she said this did not influence her statements at the hearing. Ms. Ross said she had heard about the complaints against Dr. Ali from her sister, also a patient, who said Dr. Ali told her there were people making up stories about him and "girls causing trouble." Ms. Ross said that she went to see Dr. Ali and told him she knew [Patient 3], and that she would not lie for her.

Ms. Ross said that [Patient 3] said she was going to "go after him." Once they drove to the clinic in Ms. Ross' vehicle to see if Dr. Ali was in; when they saw Dr. Ali's car, Ms. Sugurdson said, "I'm going to be driving that." She also said she planned to see Dr. Ali after work. [Patient 3] said he had asked her to join a fitness program, and that she wanted "to do fitness at his apartment."

Ms. Ross also testified that [Patient 3] invited her to her office; she thought this was sometime in November of 2011. She said [Patient 3] told her there was "money to be made" in human rights

complaints and that she should “try to get you something” for her dismissal from the Cree Land gas bar; [Patient 3] got some forms for her to fill out. Ms. Ross said that she had been released during her probation and was not planning to pursue any claims in connection with the termination. She was not aware of any question about the jurisdiction of the Saskatchewan Human Rights Commission.

She then said [Patient 3] said she was going to “take” Dr. Ali, and that she wanted Ms. Ross to attest that [Patient 3] had told her Dr. Ali tried to kiss her. [Patient 3] said she had alluded to this in her human rights complaint; Ms. Ross said she responded that she would not do this, as she had never been told that Dr. Ali tried to kiss [Patient 3].

Ms. Ross said that she thought [Patient 3] was “a liar and a troublemaker.” [Patient 3] had portrayed Ms. Ross as a drug user and her son as a drug dealer, and these things were not true.

Ms. Ross said that when she had been terminated from Statistics Canada, she had honestly assumed that she had no criminal record because she thought suspended sentences or periods of probation didn’t count. She produced a criminal record check (exhibit R-12) which showed that these were the penalties for earlier offences.

## **Summary of Argument**

### **Argument on behalf of the College**

Counsel for the College began by alluding to the principles laid out by the Saskatchewan Court of Appeal in *Green v. College of Physicians and Surgeons of Saskatchewan* (1987), 51 Sask R. 241 (C.A.) concerning the disciplinary proceedings of the College. Though the Court was considering a decision of an appeal tribunal and not a disciplinary hearing committee such as this one, counsel said that the same principles should apply. The Court stated that the standard of proof in such disciplinary proceedings is the civil standard of proof on the balance of probabilities. In *Green*, the Court also adopted the test set out in the earlier case of *Sen v. Discipline Committee of College of Physicians and Surgeons of Saskatchewan* (1969), 69 W.W.R. 201 at 204 (Sask. C.A.):

The standard of conduct required by members of the medical profession is that which is required by responsible medical opinion of members of the profession.

Counsel also referred us to the principle set out in *Green* that “each member of the appeal tribunal is expected to bring forward and apply the specialized knowledge which that person may possess as a result of his background and training.”

Counsel pointed out that, despite a number of previous cases suggesting that there is a slightly different – and more onerous - standard of proof in professional disciplinary cases of this kind, the Supreme Court had conclusively determined this question in *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, in the following terms

... I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these circumstances do not change the standard of proof.

Though *F.H. v. McDougall* did not itself involve disciplinary proceedings, the principles set out in that case have been applied in a number of subsequent disciplinary cases. In *Moll v. College of Alberta Psychologists*, 2011 ABCA 110, [2011] A.J. No. 368 (C.A.) (QL), for example, the Court commented at

paragraph 22 that, after *F.H. v. McDougall*, “There is no ‘clear, convincing and cogent’ standard, whatever that floating standard might have meant.”

Counsel for the College said that the task of this Disciplinary Hearing Committee is to determine, first, whether the facts alleged have been proven, and secondly, if the facts have been proven, whether the conduct is “unbecoming, improper, unprofessional or discreditable” in the words of section 46 of the *Medical Profession Act, 1981*. In the Act and in the bylaws formulated pursuant to it, certain conduct is defined as being unbecoming, improper, unprofessional or discreditable. Under section 46 (o) of the Act, it is also open to the Committee to find that conduct is unbecoming, improper, unprofessional or discreditable even if the Act or the bylaws do not specifically define it as such.

In this case, counsel for the College said that a determination of the credibility of the witnesses must constitute an important factor in the decision-making of the Committee. He referred us to the distinction made by the Ontario Human Rights Tribunal between credibility and reliability, in *McKay v. Toronto Police Services Board*, 2011 HRTO 499, (2011), 72 C.H.R.R. D/143 at paragraph 9:

I note that “credibility” and “reliability” are distinct concepts: the first relates to the witness’s honesty and sincerity, while the latter encompasses the accuracy and fallibility of the evidence.

The Human Rights Tribunal in *McKay* also alluded to the often-cited case of *Faryna v. Chorney*, [1952] 2 D.L.R. 354 (B.C.C.A.), where the approach a trier of fact should take to the determination of credibility was set out as follows at paragraph 11:

The credibility of interested witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

The Tribunal went on at paragraph 11 to list the following as factors which would assist in determining credibility and reliability:

- the internal consistency or inconsistency of evidence
- the witness's ability and/or capacity to apprehend and recollect
- the witness's opportunity and/or inclination to tailor evidence
- the witness's opportunity and/or inclination to embellish evidence
- the existence of corroborative and/or confirmatory evidence
- the motives of the witnesses and/or their relationship with the parties
- the failure to call or produce material evidence

The Tribunal also commented at paragraph 13 in *McKay* that “a finding of credibility or reliability with respect to one aspect of a witness’s testimony does not automatically render the entirety of the witness’s evidence as incredible or unreliable.”

Counsel for the College urged us to think of the test for credibility as a test requiring the simple application of common sense. He urged the Committee to make clear findings in this regard.

With respect to the complaint filed by [Patient 1], counsel noted that Dr. Ali had pleaded guilty to the charge of failing to have a chaperone present while he examined her, and that he also admitted that he had tried to give her a “peck on the cheek.” [Patient 1] was at the clinic to consult him about a sensitive issue, and he knew a great deal about her history, so initiating contact with her under those circumstances was

unprofessional on his part. [Patient 1] also alleged that Dr. Ali had remained in the examining room while she dressed and undressed. Counsel for the College stressed that [Patient 1]’s evidence on this point was quite clear, and said, in contrast, the evidence of Dr. Ali contained inconsistencies. Dr. Ali said that he had left to get a swab while [Patient 1] undressed, and that as he rushed to do this, he encountered two staff members in the hallway. Yet he did not ask either of them to accompany him back to the examining room to act as a chaperone. Ms. Normand said that she met [Patient 1] in the hallway, and she was upset, and this state of distress would not be consistent with Dr. Ali’s account of having behaved with propriety.

[Patient 1] had also complained that Dr. Ali asked her if she wanted to have a love affair. The evidence showed that [Patient 1] was very upset about this, both when she told Ms. Kelly later on the day of August 12, and the next day when she met Ms. Normand. The evidence of her distress on this point lends support to her allegation that Dr. Ali said something untoward to her. The allegation is also supported by the care she took to ensure that Dr. Ali was not alone with her daughter C.L., even though a separate appointment had been arranged for her. These events all occurred within a short time of her interaction with Dr. Ali. Counsel suggested the Committee must either find that the most likely explanation is that events occurred as described by [Patient 1], or that she fabricated a complaint against a long time doctor with whom she had previously had a good relationship.

In the case of the [Patient 2] complaint, counsel for the College said that it was not disputed that [Patient 2] initiated the discussion of whether there might be a job for her at the clinic. There were disparities in the evidence about the subsequent conversation, but [Patient 2] herself was confident about the version she described. Mr. Mund’s evidence concerning the distraught state of [Patient 2] when she went to see him after seeing Dr. Ali lends credence to the allegation that his conduct was unprofessional. The version outlined by Dr. Ali – that early in the conversation she said that if she could have a job, he could suck her breasts; that he then made a series of personal disclosures; that he noted none of this on her chart; and that he told her to come back in a week – was inherently improbable, and it is far more likely that what [Patient 2] said was true.

Concerning the question of whether [Patient 2] had been at the clinic on August 20, counsel for the College said that it would not have made sense for Dr. Ali to treat [Patient 2] the way the notes in exhibit R-9 indicated. [Patient 2] was allergic to amoxicillin, and this would have been clear from her chart; moreover, antibiotics are not effective against viral infections. In any case, [Patient 2] denied that she had been there, and did not fill any prescription. Dr. Ali did not remember her being there. Only Ms. Stewardson was certain [Patient 2] had been there, and counsel suggested her testimony needed to be assessed carefully. Counsel argued she was mistaken about [Patient 2] being there on August 20. Ms. Stewardson had been involved in compiling the documents in connection with the complaints to the College, and as exhibit R-9 showed, there were notes in [Patient 2]’s file about a visit on August 20. Counsel said that it is unlikely Ms. Stewardson would remember a single patient out of the many of visited the clinic every day. Ms. Stewardson was also convinced that [Patient 2] had filed a false WCB claim, and counsel suggested that this might have predisposed her to try and discredit [Patient 2].

In relation to the [Patient 3] complaint, counsel for the College said that there is no way of reconciling the testimony of the witnesses other than to find that one or more of them is lying. [Patient 3]’s evidence was that Dr. Ali made personal disclosures to her about his life, and that he also asked her questions about her personal life, before trying to kiss her, and that these questions had nothing to do with her medical condition. Dr. Ali, on the other hand, said that she was asking him personal questions, and he was making it clear he was not interested. Counsel for the College argued that Ms. Ross was one witness whose demeanour did provide guidance to the credibility and reliability of her evidence. It was clear that she was motivated by a desire to “stand up” for Dr. Ali. Though she denied she had a bad relationship with [Patient 3], [Patient 3] testified that there was personal animosity between them.

Counsel argued that some of the allegations against Dr. Ali – his asking [Patient 1] to have a love affair, and the personal questions put to [Patient 3] – fall within the definition of sexual impropriety in Bylaw 8.1 (a) of the College of Physicians and Surgeons, and if these allegations are found to be well-founded, the breaches of the bylaws would constitute unbecoming, improper, unprofessional or discreditable conduct:

- (ii) “Sexual impropriety” and “sexual violation” include, but are not limited to:
1. Acts or behaviours which are seductive or sexually-demeaning to a patient or which reflect a lack of respect for the patient’s privacy, such as examining a patient in the presence of third parties without the patient’s consent or sexual comments about a patient’s body or underclothing;
  2. Making sexualized or sexually-demeaning comments to a patient;
  3. Requesting details of sexual history or sexual likes or dislikes when not clinically indicated;
  4. Making a request to date a patient or dating a patient;
  5. Initiation by the physician of conversation regarding the sexual problems, preferences or fantasies of the physician;
  6. Kissing of a sexual nature with a patient;
  7. Physician-patient sex whether initiated by the patient or not;
  8. Conduct with a patient which is sexual or may reasonably be interpreted as sexual such as touching any sexualized body part of a patient except for the purpose of an appropriate examination or treatment;
  9. Touching any sexualized body part of the patient where the patient has refused or withdrawn consent;
  10. Sexual acts by the physician in the presence of the patient.

If the conduct of Dr. Ali is not found to be consistent with this definition, it is still open to the Committee to find that the conduct was unbecoming, improper, unprofessional or discreditable. He also pointed out that section 52 of the *Medical Profession Act, 1981* permits the Committee to make a recommendation with respect to penalty.

### **Argument on behalf of Dr. Ali**

Counsel for Dr. Ali also cited *F.H. v. McDougall*, emphasizing that the onus lies on the College throughout to establish the allegations listed in the charges. In this respect, he said the Committee must be careful not to make the error described in *G.H. v. College of Physicians and Surgeons of British Columbia* (1995) 8 B.C.L.R. (3d) 392:

... [T]here is a marked difference between the stringently critical approach which the committee took to assessing the evidence of Dr. G.H. and the uncritical approach which it took to that of the complainant resulting in the remarkably dogmatic conclusion with which it began its discussion of credibility, i.e. that it accepted her evidence wherever it conflicted with his.

Counsel also urged the Committee to be mindful of the principle alluded to at paragraph 44 of *F.H. v. McDougall*: that the party that carries the burden of proof will not have met the burden by establishing that the events “might have happened.” Counsel referred us in this context to the comment of the Saskatchewan Court of Appeal in *Shamsuzzaman v. College of Physicians and Surgeons of Saskatchewan*, 2011 SKCA 41, (2011), 371 Sask. R. 84 (C.A.) at paragraph 39:

The tribunal is, however, obliged to consider the whole of the evidence and determine, on a balance of probabilities whether the complaint is proven. To that end, the Committee, in this case was required to determine the credibility of both the claimant and Dr. Shamsuzzaman. The onus remained on the College throughout the process to prove the complaint.

Like counsel for the College, counsel for Dr. Ali drew attention to the distinction between credibility and reliability. He said the assessment of credibility is directed to whether a witness has been untruthful, and suggested that witnesses may lie because they make a conscious decision or because they feel under

pressure. He noted that where the testimony of witnesses cannot be reconciled, the trier of fact may choose one or the other version, or may decide that neither version represents the truth.

Reliability is a different issue. A witness may be telling the truth as they know it, but it may be based on hearsay, assumptions, or false information, and thus be unreliable. Though such unreliability will not always be a matter of consequence, there are facts which are so significant that a determination of reliability must be made.

Counsel for Dr. Ali alluded to the evidence showing that during the time frame when the complaints were made, his client had an exceedingly heavy workload, and this had an impact on his health. In 2004, he had given an undertaking to the College to have chaperones present when he performed intimate examinations of female patients. This policy was well-known, and the evidence indicated that it was complied with prior to August 12, 2011. Dr. Ali conceded that he had failed to observe the policy during the clinic visit of [Patient 1] on August 12.

Counsel said that the evidence showed that [Patient 1] had seen Dr. Ali literally hundreds of times in the previous seven years. The evidence was less clear about why she was seeing him on this particular occasion. [Patient 1] said she wanted to check up on the results of her Pap test, and that she also had a urine sample taken in relation to a suspected urinary tract infection; in cross-examination, she said that it was possible she might have mentioned she was experiencing a vaginal discharge. Ms. Normand's evidence was that there was no discussion of the reason for [Patient 1]'s visit when she arrived, and that no urine test was conducted. Dr. Ali said that he did see the results of the Pap test during this visit, and he prescribed medication for [Patient 1]'s STD. Counsel noted that the evidence of both [Patient 1] and Dr. Ali was consistent with a request by [Patient 1] that her daughter be seen separately, as they were discussing sensitive matters.

Other parts of the evidence of the witnesses were less consistent. Dr. Ali said that he left the room to get a swab while [Patient 1] was in the examining room, while [Patient 1] said he remained in the room. Ms. Normand said that she saw Dr. Ali in the hallway with a swab in his hand, although it was not clear whether this was before or after the swab had been used. Ms. Normand also said she saw [Patient 1] in the hallway and that she seemed upset, while [Patient 1] testified that she said hello to Ms. Normand when she met her. Counsel said that [Patient 1] mentioned at the hearing for the first time that her daughter C.L. was in Dr. Ali's office when she arrived there after being examined, and that she asked C.L. to step out into the hallway. He noted that, given the significance of this time period, it is "unusual" that C.L. was not called to testify about her observations. Instead, Ms. Kelly was called, who was not the first person to encounter [Patient 1] after her interaction with Dr. Ali.

Dr. Ali did concede that he tried to kiss [Patient 1], but denied that he asked her to have a love affair. Counsel suggested that this denial represented the most probable scenario in the circumstances. [Patient 1] was, as far as Dr. Ali knew, moving to Ontario, as they had talked about making arrangements for her prescriptions; furthermore, Dr. Ali knew that she was suffering from an STD. At the end of their conversation, Dr. Ali said he had been telling [Patient 1] that she had a chance for a fresh start, and he tried to give her a peck on the cheek to wish her well.

Counsel for Dr. Ali suggested that it was not believable that, if [Patient 1] had in fact told Ms. Kelly that Dr. Ali wanted to have a love affair, Ms. Kelly would not have told the preliminary investigation committee about this. He suggested that there are a number of explanations for [Patient 1]'s statement that Dr. Ali suggested she have a love affair with him – that she was mistaken, that she made it up, that she had come to believe it herself – but none of them amount to proof that Dr. Ali did say that.

In the case of [Patient 2], counsel said that by her own account she was looking for other employment. Although counsel acknowledged that there was no evidence that [Patient 2] ever did file a WCB claim, she did say she had slipped at work, and this might have given Ms. Stewardson the impression she was trying to make a claim. He noted that Ms. Stewardson was “patrolling” near Dr. Ali’s office, and that she was aware of [Patient 1]’s complaint at the time. Ms. Stewardson did not hear all of the conversation between Dr. Ali and [Patient 2], but what she did hear – that Dr. Ali was happy with his staff – was consistent with Dr. Ali’s account. On the other hand, there were inconsistencies between the accounts that [Patient 2] had given in her police statement, in her statement to the College and in her evidence at the hearing. [Patient 2] did admit that she initiated the discussion of whether a job was available, and if Dr. Ali’s comments were inappropriate, the question is why [Patient 2] did not leave. [Patient 2] not only proceeded with the appointment and with having her prescription filled, but after she saw Mr. Mund, reportedly in a distressed state, she went back to work.

With respect to [Patient 3], counsel for Dr. Ali noted that her own evidence indicated she had been prepared to entertain discussion of personal issues, and that she became upset with Dr. Ali asked her about going on dates and tried to kiss her. The fact that she waited till September to complain is not in itself significant, but the explanation she provided for this – that she did not know who she should complain to – is not credible. She was a well-educated woman, who had worked at the Children’s Aid Society and must have known about resources available for complaints of mistreatment.

The complaint of [Patient 3] focused on an encounter with Dr. Ali in one of the examining rooms in the clinic. Given the confined space, and the fact that Dr. Ali was reaching for the door, she may have misunderstood his intentions and interpreted his action wrongly.

In weighing [Patient 3]’s evidence, consideration has to be given to the evidence of Ms. Ross that [Patient 3] was “after” Dr. Ali, and that she was encouraging Ms. Ross herself to pursue a complaint regarding her dismissal from Cree Land. [Patient 3] had made “a feeble attempt to throw mud” on Ms. Ross by misstating the age of her brother to portray him as a victim of Ms. Ross’ son, and by portraying Ms. Ross and her son as drug users and dealers.

In light of all of the weaknesses in the evidence adduced in support of the complaints, counsel suggested that all three of the remaining complaints should be dismissed.

### **Rebuttal on behalf of the College**

Counsel for the College said that, though nothing turns on many of the medical details concerning [Patient 1], it should be noted that there had been an inaccuracy in one aspect of the summary of evidence given by counsel for Dr. Ali. He had suggested that when Dr. Ali did the swab on [Patient 1], he had known about the results of the Pap test; in fact, the evidence showed that Dr. Ali was not aware of the results until he went to his office and found the report on his desk, after the swab was taken.

With respect to Ms. Kelly’s testimony, counsel for the College said that the fact that there was no indication in the report of the preliminary investigation committee that Ms. Kelly had said Dr. Ali asked [Patient 1] to have a love affair did not show that her evidence was unreliable. The report of the investigation committee consisted of a summary, not an enumeration of every statement made by the persons who were interviewed.

He suggested that it was consistent with human nature for [Patient 2] to continue with her appointment after Dr. Ali had made the alleged statements to her. She was a young person who needed help with a particular medical problem, and it wouldn’t necessarily be expected that she would make the judgment that she should leave.

## Adverse Inference

In the course of the argument of counsel for Dr. Ali, he drew attention to the fact that [Patient 1]'s daughter C.L. had not been called to testify, despite the fact that she had been with [Patient 1] shortly after Dr. Ali's allegedly objectionable conduct had occurred. Counsel for the College tried to respond to this by providing an explanation of why he had not called C.L. as a witness. Counsel for Dr. Ali objected to this, saying he was entitled to ask the Committee to draw an adverse inference from the failure to call C.L., and that counsel for the College could not give evidence as part of his argument.

The Committee agreed to permit both parties to argue this point at a later time. Subsequently, both parties submitted an agreed statement of facts and written briefs, and they presented oral argument by conference call. The Committee reserved its ruling on this issue, and it is here provided as part of this decision.

Counsel for Dr. Ali outlined a number of issues to which C.L.'s testimony would have been pertinent. These included matters on which the evidence of [Patient 1] and Ms. Normand were inconsistent, such as what [Patient 1] gave as the reason for her visit; whether C.L. was expecting to be or wanted to be examined separately by Dr. Ali; where C.L. was at various points in the sequence of events; whether [Patient 1] opened the door of Dr. Ali's office or whether it was opened by someone else; and what was communicated by [Patient 1] to C.L. in the moments after her interaction with Dr. Ali.

Counsel for Dr. Ali argued that the onus was on the College to provide an explanation for failing to call a witness who could have filled crucial gaps in the evidence, and in the absence of such an explanation, an adverse inference can be drawn about the nature of the evidence that the witness might have provided.

Counsel for the College stated that the argument on behalf of Dr. Ali was based on pure speculation about what C.L. might have said as a witness. The agreed statement of facts indicated that counsel for the College advised counsel for Dr. Ali that he did not think C.L.'s testimony would be significant, that she could add nothing about the statements allegedly made by Dr. Ali to her mother, and that he had decided not to call her because he viewed her as an "unnecessary" witness. He said that the College did not fear what she might say, but had decided that she could not add anything. He said that it had been open to counsel for Dr. Ali to ask to have her made available for cross-examination, and such a request had never been made.

In *Murray v. City of Saskatoon*, [1952] 4 W.W.R. (N.S.) 234 (Sask. C.A.), the Saskatchewan Court of Appeal at paragraph 20 alluded to the classical statement in the 3d edition of *Wigmore on Evidence* concerning the drawing of an adverse inference by a trier of fact:

The failure to bring before the tribunal some circumstance, document or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstances or document or witness, if brought, would have exposed facts unfavourable to the party. These inferences, to be sure, cannot fairly be made except upon certain conditions; and they are also open always to explanation by circumstances which make some other hypothesis a more natural one than the party's fear of exposure. But the propriety of such an inference in general is not doubted.

The Court of Appeal in *Murray* went on at paragraph 21:

The party affected by the inference may, of course, explain it by showing circumstances which prevent the production of the witness; but where the failure to produce the witness is not explained, the inference may be drawn that the unproduced evidence would be contrary to the party's case or at least would not support it.

In some of the cases cited by counsel on this point, the focus was on the distinctive duties of Crown prosecutors in criminal cases; see e.g. *R. v. Jolivet*, 2000 SCC 29, [2000] 1 S.C.R. 751. Others did, however, discuss the idea of adverse inference in the context of civil proceedings. In *Brand v. College of Physicians and Surgeons of Saskatchewan* (1990), 83 Sask. R. 218 (Q.B.), the Saskatchewan Court of Queen’s Bench, comparing the duties of prosecutors with those of counsel for the College in a disciplinary matter, commented:

Even if the duties of counsel for the [College] could be equated with those of a Crown prosecutor, there is no duty on Crown counsel to produce every individual who may have been involved in an incident of which the accused is charged.

The Court went on to indicate that counsel had fulfilled his responsibilities by advising counsel for the individual facing charges of the identity of potential witnesses, and by advising that he would not be calling a particular witness.

In *Sunnyside Nursing Home v. Builders Contract Management Ltd.*, [1985] 4 W.W.R. 97 (Q.B.), the Court commented at paragraph 32:

It is not the rule that a party “should produce all the witnesses, no matter how numerous they might be, who knew anything of the transaction.” One may explain away the adverse inference utilizing, inter alia, this condition, if in logic and experience it furnishes a plausible reason for non-production.

The cases cited by counsel discussed a range of possible explanations that might be put forward for the failure to call a witness. These would include situations where “the point has been adequately covered by another witness, or an honest witness has a poor demeanour or other factors unrelated to the truth of the testimony” (see *Jolivet*); “a witness was examined for discovery and that evidence is before the Court” (see *Neen v. Cobble Hill Grocery Ltd.*, 2006 BCSC 1494, [2006] B.C.J. No. 2623 (S.C.) (QL)); the missing witness is “so unreliable that nothing he says can be believed under oath or otherwise” (see *Brand*); the witness was called away for a family emergency (see *Audmax Inc. v. Ontario (Human Rights Tribunal)*, 2011 ONSC 315, (2011), 328 D.L.R. (4<sup>th</sup>) 506 (Sup. Ct.)); a witness was viewed by all parties as “non-essential” (see *First Choice Outfitters v. Neilly*, 2008 SKQB 406, (2008), 322 Sask. R. 200 (Q.B.)).

Two decisions of the Ontario Superior Court of Justice, *Korody v. Bell*, [2009] O.J. No 1716 (Sup. Ct.) (QL) at paragraphs 24-29, and *Marine Clean Ltd. v. Forge*, [2009] O.J. No. 1042 (Sup. Ct.) (QL) at paragraphs 127-32, contain the same potted summary of cases addressing the issue of adverse inference. The summary includes a reference to the following statement from *R. v. Ogunsakin*, [2008] O.J. No. 10 (Sup. Ct.) (QL) at paragraph 20:

The law is clear that the circumstances in which an adverse inference may be drawn by a trier of fact based on a failure to call a witness or adduce certain evidence will be rare and should only be done with “the greatest of caution,” particularly where an explanation for not introducing the evidence has already been provided to the court.

In *R. v. Cook*, [1997] 1 S.C.R. 1113, which was cited in *Jolivet*, an accused was convicted of an offence although the victim himself was not called as a witness. The Supreme Court of Canada considered the decision of the Privy Council in *Seneviratne v. R.*, [1936] 3 All E.R. 36, and focused in particular on the following comment, quoted at paragraph 24:

Witnesses essential to the unfolding of the narratives on which the prosecution is based must, of course, be called by the prosecution, whether in the result the effect of their testimony is for or against the case for the prosecution.

In *Cook*, after examining cases in which Canadian courts interpreted this as placing an obligation on prosecutors to call witnesses whose evidence would be material, the Supreme Court concluded that recent decisions of the Court made it clear that this *obiter* statement from the Privy Council did not mean that the discretion of prosecutors to decide how to present their case should be restricted, though the failure to adduce particular evidence might put the Crown at risk of losing the case. L’Heureux-Dubé J observed at paragraph 31:

“[E]ssential to the... narrative” does not mean, as many have attempted to suggest, that all witnesses with relevant testimony must be called by the prosecution. On the contrary, it refers solely to the Crown’s burden of proof in a criminal proceeding. Where the “narrative” of a given criminal act is not adequately set forth, elements of the offence might not be properly proven, and the Crown risks losing its case.

In *Jolivet* itself, the witness whose absence from the proceedings was the subject of discussion was not called because Crown counsel believed he would not be a truthful witness. The Court considered that Crown counsel may have made the choice not to have the witness testify because another witness had given clear evidence, and he did not want this testimony to be undermined by possible inconsistent statements from an untruthful witness. The Court went on at paragraph 21:

If this was a concern that entered into the exercise by Crown counsel of his discretion, it is a concern shared by any prudent counsel faced with running his case effectively in an adversarial system. It is not the duty of the Crown to bend its efforts to provide the defense with the opportunity to develop and exploit potential conflicts in the prosecution’s testimony. This is the stuff of everyday trial tactics and hardly rises to the level of an “oblique motive.” Crown counsel is entitled to have a trial strategy and to modify it as the trial unfolds, provided that the modification does not result in unfairness to the accused. Where an element of prejudice results (as it did here), remedial action is appropriate.

Thus, despite the apparently categorical principle set out in *Murray* that a trier of fact is entitled to draw an adverse inference from the failure of the other party to call a witness (and it must be remembered that in *Murray* no such inference was given any weight), subsequent decisions show that the idea of adverse inference has been qualified and restricted in many ways. Indeed, when cases such as *Jolivet* indicate that it is an acceptable explanation for not calling a witness that the witness may not be credible or may give testimony that conflicts with that of other witnesses, one must question whether the apparently robust principle set out by *Wigmore* and quoted in *Murray* continues to apply. The passage quoted in *Murray* suggested that an adverse inference may be drawn if the party not calling the evidence apparently “fears” its effect; yet in *Jolivet* the Supreme Court clearly saw such fear – that a witness would be untruthful, or that the evidence might not be consistent with other evidence – as an adequate explanation for not calling the evidence, and as an understandable feature of the strategic choices made by the party on whom the onus to establish the case rests. The failure to call particular evidence may have implications for the ability of the party to satisfy the burden of proof, but it does not occasion an “adverse inference” in any formal sense.

The suggestion in *Ogunsakin* that cases where an adverse inference should be drawn will be “rare” and that “the greatest of caution” should be exercised by a trier of fact in deciding to draw such an inference seems consistent with the approach taken by the Supreme Court in *Cook* and *Jolivet*.

It is our view that this is not the “rare” case where the drawing of an adverse inference would be appropriate. Counsel for the College chose not to call [Patient 1]’s daughter as a witness, having decided that her testimony would not add anything to the testimony of witnesses he did intend to call. He advised counsel for Dr. Ali of this decision. We cannot perceive any prejudice to Dr. Ali from the absence of

testimony from this witness, as other witnesses were called who did make clear the nature of the allegations in the charges.

As counsel for Dr. Ali pointed out a number of times, the burden of proof lies on the College to establish the charges on a balance of probabilities. As some of the cases have indicated, the risk that the party failing to call evidence will not be able to meet the onus of proof is one that that party must take into account in making its decision. This Committee will have to decide, taking the evidence as a whole into account, whether the College has in fact met the burden resting on it. We understand that our task in this regard is not made any less onerous because we have decided not to draw an adverse inference from the fact that there was no testimony from C.L.

### **Analysis and Decision**

The charges that were set out at the beginning of this decision are based on provisions in the *Medical Profession Act, 1981* and in the bylaws of the College of Physicians and Surgeons of Saskatchewan promulgated under that Act. The charges reference sections 46 (m), 46 (o) and 46 (p) of the Act, which read as follows:

- 46 Without in any way restricting the generality of “unbecoming, improper, unprofessional or discreditable conduct,” a person whose name is entered on the register, the education register, the temporary register or the podiatric surgical register is guilty of unbecoming, improper, unprofessional or discreditable conduct, where he:
- (m) violates any of the terms and conditions imposed by the council under the Act in connection with his practice;
  - (o) does or fails to do any act or thing where the discipline committee considers that action or failure to be unbecoming, improper, unprofessional or discreditable;
  - (p) does or fails to do any act or thing where the council has, by bylaw, defined that act or failure to be unbecoming, improper, unprofessional or discreditable.

The first three charges referred to sections 46 (o) and 46 (p), and also to bylaw 8.1 (b) (xvi) of the bylaws, which reads as follows:

- 8.1 (b) The following acts or failures are defined to be unbecoming, improper, unprofessional or discreditable conduct for the purpose of section 46 (p) of the Act. The enumeration of this conduct does not limit the ability of Discipline Hearing Committees to determine that conduct of a physician is unbecoming, improper, unprofessional or discreditable pursuant to subsection 46 (o):
- (xvi) committing an act of sexual impropriety with a patient or an act of sexual violation of a patient.

Earlier in this decision, the definitions of “sexual impropriety” and “sexual violation” were reproduced.

The fourth charge, which referenced sections 46 (m) and 46 (o) of the Act concerned the failure of Dr. Ali to abide by an undertaking given to the College to have a chaperone present for the examination of adult female patients, by failing to conduct the examination of [Patient 1] on August 12 in the presence of a chaperone. As we have seen, Dr. Ali pleaded guilty to this charge and it is not necessary for us to make any further determination in respect of it.

The evidence concerning the factual allegations made in connection with the other three charges was often inconsistent. It is an important part of the task of this Committee to make determinations about the credibility of the witnesses and the reliability of their testimony, keeping in mind the overall responsibility of the College to convince us that it is more likely than not that the allegations were true. For the most part, we are of the view that the witnesses did their best to provide an accurate account of the events as they remembered them. It was to be expected that, after more than a year had passed, there would be matters of detail about which they were unclear or cases where different events had become merged together in their memories. As counsel recommended, we have proceeded with caution in making our findings.

We should make it clear that we accept the evidence of the three complainants that they had no knowledge of or contact with each other before filing their complaints. Though counsel for Dr. Ali intimated that [Patient 2] and [Patient 3] may have been influenced by information swirling around the clinic about the complaint filed by [Patient 1], we do not think the evidence established that, and we are satisfied that the complaints were filed independently.

### **Charge Number 1 – [Patient 1]**

There were basically two “chapters” to [Patient 1]’s complaint concerning the conduct of Dr. Ali during her visit to the clinic on August 12, 2011. The first concerned his conduct when she was in the examining room and he was taking a swab. [Patient 1] testified that she was alone with Dr. Ali during this procedure, that she dressed and undressed in his presence, that she was not covered by a sheet while the sample was being taken, and the process of taking the swab seemed “odd.” She testified that she felt awkward and embarrassed during the time in the examining room.

The other phase of [Patient 1]’s interaction with Dr. Ali occurred in his office, where she testified that he asked her if she wanted to have a love affair and tried to kiss her. In his own testimony, Dr. Ali admitted that he tried to kiss [Patient 1], although they characterized the nature of this attempt differently.

With respect to the period of time spent in the examining room, Dr. Ali testified that he told [Patient 1] not to undress in front of him, and that he left the room to find a swab. He did not say that [Patient 1] had been covered with a sheet or that he had not been present when she dressed again. He conceded that it was an error not to have a chaperone present.

Dr. Ali gave evidence that he noted vaginal discharge when he examined [Patient 1], and decided a swab was necessary. [Patient 1] testified that she thought the swab was taken in an “odd” and superficial way. The fate of the swab was somewhat mysterious, though Ms. Larson was able to shed some light on this. She testified that Dr. Ali brought her the swab sometime after [Patient 1] had left the clinic. Dr. Ali said that ordinarily the sample would be given to the patient to be taken by the lab, but he had not given the sample to [Patient 1], and asked Ms. Larson to send the sample to the lab. Ms. Larson said she could not do it that evening, as the lab was not open, but left the sample and a note at Ms. Normand’s work station expecting her to be there the next day. Ms. Normand testified that she did not find the sample for some time as it had been pushed under something else on the desk.

It was not directly argued by counsel for the College that the taking of the swab had no serious medical purpose. If the testimony of [Patient 1] on this point was intended to leave us with the impression that the taking of the swab was some kind of pretext for contact between Dr. Ali and [Patient 1], the evidence of Ms. Larson shows that Dr. Ali followed through with having a test made of the sample, though there were delays attributable from a departure from the usual procedure for this. The wording of the charges does

not invite us to consider whether the way the swab was taken or the reason for taking it fell within the scope of appropriate medical judgment, and we refrain from commenting on this.

The remaining question for us is whether the way Dr. Ali treated [Patient 1] during the time they were in the examination room transgressed the boundaries of acceptable practice and amounted to unbecoming, improper, unprofessional or discreditable conduct. In our view it did. It is true that there is a difference between the testimony of Dr. Ali and [Patient 1] on certain points; Dr. Ali said he told [Patient 1] not to get undressed in front of him and that he left the room to get a swab. Even by his own account, however, he did not call in a chaperone, provide [Patient 1] with a sheet or absent himself while she got dressed. These represented unnecessary infringements on the privacy and dignity of [Patient 1], and, pursuant to section 46 (o) of the Act, we find them to be instances of unbecoming, improper, unprofessional or discreditable conduct. Whether or not Dr. Ali intended to sexualize this encounter, he placed [Patient 1] in a situation which was awkward for her, as he conducted an intimate examination of her while she remained partly naked.

It is somewhat more difficult to make a determination with respect to the second part of the complaint concerning the interaction between [Patient 1] and Dr. Ali in his office, in part because there are more direct conflicts in the evidence concerning these events. According to Dr. Ali, he discovered that the report concerning her Pap smear was on his desk, and they had a conversation about the diagnosis of an STD. They talked about her impending move to Toronto and the prescriptions she would need to make the transition. Since she was a long-time patient who had, to his knowledge, a lot of personal and medical problems, he decided to give her a chaste peck on the cheek as a farewell gesture.

[Patient 1] confirmed that she and Dr. Ali had talked about the STD diagnosis and about her move to Toronto, and that Dr. Ali had provided prescriptions for the STD and for the pain she suffered from her back problem. She said, however, that Dr. Ali then asked her if she would have a love affair and tried to kiss her. She was very upset by this, and left the room, where she encountered her daughter C.L. She decided she would accompany her daughter for her appointment with Dr. Ali.

Counsel for Dr. Ali argued that it was improbable that Dr. Ali would attempt to initiate some personal relationship with [Patient 1] on the eve of her departure for Toronto, and that we should discount her version of this interaction because of that.

Looked at from a different perspective, it also seems unlikely that [Patient 1], who had seen Dr. Ali numerous times for a period of years and had developed what she described as a highly satisfactory relationship with him as a physician, would suddenly turn on him and make accusations of inappropriate conduct if nothing untoward occurred during her clinic visit of August 12.

Both [Patient 1] and Dr. Ali described a relationship in which [Patient 1] sought help for a range of complex medical and psychological problems. The concerns presented by [Patient 1] made it necessary for her to reveal highly personal information and to submit to very intimate examination by Dr. Ali. They discussed her relationship with her spouse, the resulting depression and anxiety, diagnosis of STDs, her dependence on pain medications, and her frequent urinary tract infections. [Patient 1] returned again and again to the clinic, apparently confident that Dr. Ali would deal with the issues she raised sensitively and constructively.

[Patient 1] claimed that Dr. Ali's invitation to have a love affair and his attempt to kiss her left her very distressed. As discussed earlier, her daughter, who saw her immediately after this encounter, was not called to testify, and we are not prepared to speculate about what she might have contributed. Two other witnesses, Ms. Kelly and Ms. Normand, did give evidence on this point.

Ms. Kelly, who saw [Patient 1] within hours of the incident, said her recollection was clear that [Patient 1] told her that Dr. Ali had asked her to have a love affair and had tried to kiss her. She said that, in her experience of counselling clients of the pharmacy, she had not encountered a situation like this, and so it stood out in her mind. She also recalled that [Patient 1] had been highly upset when she talked to her. She could not recall whether she had told the investigation committee about the invitation to have a love affair, but she was confident that [Patient 1] had told her about it. Ms. Kelly was a completely disinterested witness, in that she did not have any relationship with [Patient 1] or Dr. Ali, and there was certainly no reason for her to fabricate or alter her evidence. Since she was not part of any conversational circle in which the events of August 12 would have been retailed, it is hard to see how she would have known of the invitation to have a love affair unless [Patient 1] told her. We are persuaded that Ms. Kelly was told by [Patient 1] that Dr. Ali had asked her to have a love affair and had tried to kiss her, and that [Patient 1] was in a state of distress when she saw Ms. Kelly.

Ms. Normand had coffee with [Patient 1] the day after she saw Dr. Ali, and according to Ms. Normand was still visibly distressed. Her hands were shaking and her makeup was smeared. Ms. Normand admitted that her employment relationship with Dr. Ali had not ended well. Nonetheless, our assessment of her testimony is that she attempted to give a balanced account of what she had observed. She said she had previously had a friendly relationship with [Patient 1], but they had not had a social relationship outside the clinic. She had clearly been concerned about Dr. Ali's health, and had encouraged him to take better care of his own medical circumstances. She said that she did not have total confidence in Dr. Ali as a physician by the time she stopped working at the clinic, but she did not express hostility toward him.

By all the accounts given by witnesses, [Patient 1] had experienced a great deal of trouble in her life. In her testimony, however, she came across as a strong person who had used her best judgment to make important choices – she was disentangling herself from a difficult relationship, and seemed determined to deal with various medical problems. This was supported by Dr. Ali's account of his dealings with her. She had a longstanding relationship with Dr. Ali that had been characterized up to this point by her sense of trust in him and an ability to confide in him. It is difficult to believe that if all Dr. Ali offered on August 12 was a farewell peck on the cheek, she would not have either welcomed this or at least rebuffed it more calmly. Her reaction to what happened supports her allegation that it represented a drastic departure from what she had come to expect in her dealings with Dr. Ali.

Our conclusion is that there was more to this encounter than a chaste kiss to mark the end of a long-term doctor-patient relationship. We find that Dr. Ali did initiate discussion of having a personal relationship with [Patient 1] and that his attempt to kiss her amounted to more than the peck on the cheek he described. Though counsel for Dr. Ali urged us to find this improbable because [Patient 1] was leaving for Toronto, it is equally possible that Dr. Ali saw this as an opportunity because he would no longer be seeing her as a physician, and there was evidence that he himself visited Toronto occasionally and had connections there.

We find that this conduct on the part of Dr. Ali constituted unbecoming, improper, unprofessional or discreditable conduct in several respects. It was a betrayal of the longstanding relationship he had with [Patient 1] as a patient, during which she had come to rely on his professional judgment. It also, in our view, fell within the scope of the definition of "sexual impropriety" under bylaw 8.1 (b) (xvi). In the conversation on August 12, Dr. Ali attempted to sexualize their relationship. We find, therefore that Dr. Ali was in violation of both section 46(o) and section 46(p) of the *Medical Profession Act, 1981*, and that the College has met the onus of proving charge number 1.

## **Charge Number 2 – [Patient 2]**

Unlike [Patient 1], [Patient 2] had not consulted Dr. Ali often, although there was evidence that she had seen him on several previous occasions. One of these occasions was allegedly August 20, a few days before the events occurred that gave rise to the complaint. There were notes entered on [Patient 2]'s chart outlining this visit, which was alleged to have concerned a sinus infection, for which Dr. Ali prescribed antibiotics.

[Patient 2] denied that she had been at the clinic on this occasion. She said that she would certainly not have accepted a prescription for amoxicillin as she had an allergy to penicillin. Dr. Ali did not recall seeing her on that date, and admitted that it was possible that information related to another patient had been entered in [Patient 2]'s chart in error, as this sometimes occurred. The person who claimed to have the clearest recollection of [Patient 2] being at the clinic on August 20 was Ms. Stewardson, who said [Patient 2] "stood out," and that she was sure [Patient 2] had come to see Dr. Ali on that date.

We think that Ms. Stewardson was doing her best to provide her faithful recollection of events. We have concluded, however, that her testimony may have been influenced by the fact that she felt she had reason to dislike and be mistrustful of [Patient 2]. [Patient 2] testified that she had been concerned about waiting a long time to see Dr. Ali, as she had to be back at her place of work before another employee left. Ms. Stewardson's testimony was that on August 25 [Patient 2] was being insistent on being seen as soon as possible, and that ultimately another patient yielded his place in line so she could precede him.

Ms. Stewardson also came to believe that [Patient 2] was attempting to file a false WCB claim. All the evidence, including that of [Patient 2] herself, indicates that [Patient 2] did say she had slipped at work as part of her explanation for coming to the clinic. We are satisfied that Dr. Ali proceeded, as was the practice with work-related injuries, to fill out a form for submission to the WCB. We are also satisfied that [Patient 2] did not initiate a claim or expect compensation; she said that her concern was about whether her underlying back problem would be exacerbated by her fall at work, and was not complaining of any actual injury resulting from the fall. Ms. Stewardson, however, later noted that the WCB form had been completed, and understood – inaccurately, as it happened – that [Patient 2] was no longer working at Wheaton Chev when she was at the clinic on August 25.

We would also note that Ms. Stewardson had been involved in assembling charts and other documentation to be submitted to the College in connection with [Patient 2]'s complaint. Since the notes in exhibit R-9 showed that [Patient 2] had visited the clinic on August 20, it is possible that Ms. Stewardson was inclined to believe on the strength of that entry that it was true.

Though Ms. Stewardson denied that her suspicion of [Patient 2] or her involvement with the documents influenced her recollection of [Patient 2] being present on August 20, we think in this instance these factors must have played a part. We think it highly unlikely that [Patient 2] was at the clinic on August 20, despite Ms. Stewardson's recollection. It is improbable that neither [Patient 2] nor Dr. Ali would remember a visit that is supposed to have taken place only a few days before August 25, especially as the chart indicates that the last visit prior to August 20 had occurred in 2009. We find that [Patient 2] did not attend the clinic on August 20.

The supposed clinic visit of August 20 is not highly significant in itself. It may be seen as connected with the reliability of the evidence given by Ms. Stewardson herself and by [Patient 2] and Dr. Ali – rather than the credibility of those witnesses on this point, as our view is that all three of them were making genuine efforts to recall whether this event had taken place or not. If it did occur, it might have shed light on the tone of the relationship between Dr. Ali and [Patient 2]; since we have concluded it did not, we cannot learn anything from it.

The accounts given by [Patient 2] and Dr. Ali of what transpired between them on August 25 differ markedly in a number of respects. Dr. Ali said that [Patient 2] initiated a discussion of whether employment would be available for her at the clinic. In the course of this, she not only suggested that he fire other members of the staff to accommodate her, but offered him sexual favours if he would do this. She also revealed information about her personal life. Dr. Ali said that he responded initially in a fairly generic way by saying she could send in her resume, and, as she became more insistent, that he told her her overtures were not appropriate. He said that he tried to distract her by talking about cars.

[Patient 2] admitted that she had initiated a discussion of employment prospects at the clinic. Her explanation was that she was not satisfied with her current job at the car dealership, and that she was thinking she might look for a job in health care. She said Dr. Ali proceeded to tell her that he could fire his male receptionist if she wanted to work there. He also said that she could be his lover, and asked her to come back after work so he could suck her breasts. He told her she should not tell her husband about any of this.

In one of these versions, [Patient 2] is portrayed as a manipulative person offering sexual favours in exchange for employment, in the other as someone whose innocent inquiry triggered an inappropriate response from Dr. Ali.

[Patient 2] admitted that she had initiated the discussion concerning the possibility of a job at the clinic. At the hearing, she said that she had asked whether the clinic was hiring. In the police statement dated August 25 (exhibit C-3) this statement became the somewhat bolder, "You should hire me." In the statement [Patient 2] provided to the College on August 26 (exhibit C-4), she stated that Dr. Ali had started this part of the conversation by saying he would get rid of the male receptionist. We do not think these differences in the way she described the conversation constitute a fundamental blow to the reliability of her evidence. At the hearing she conceded that she had been the one to initiate the discussion about employment. She also conceded that she would not have had qualms if she had gained a job at the clinic because another employee had been fired.

We have concluded, however, that it is unlikely the subsequent conversation unfolded in the way described by Dr. Ali. It seems clear that [Patient 2] did not like her job, and that she had started to think about where else she might work. She was still committed enough to it to be impatient with the staff at the clinic when it seemed she might be late getting back to work. According to Mr. Mund, there was no immediate threat to [Patient 2]'s employment at Wheaton Chev on August 25. Though he had identified performance issues, at that point he said he still wanted to give [Patient 2] a chance to improve. He did not make the decision to let her go until September, and even then gave her an opportunity to stay until she found other employment, an offer she rejected. Though Mr. Mund gave testimony in support of [Patient 2]'s complaint, he seems to have had a clear-eyed view of her, and did not gloss over her shortcomings as an employee.

Mr. Mund's testimony was that when [Patient 2] returned to work after her visit to the clinic, she sought him out to ask his advice about what she should do, and that she was in a distraught state when he talked to her. This seems inconsistent with the picture of [Patient 2] as a scheming vixen who was willing to offer herself in order to get a job. If we are being asked to draw the conclusion that she was trying to even the score with Dr. Ali by complaining to the police and to the College, it is hard to know why she would draw Mr. Mund into such a scheme. Though she clearly had enough confidence in Mr. Mund to ask him for advice on this occasion, there was no evidence that they had a particularly close relationship beforehand. Indeed, their relationship had largely revolved around discussions of an employer-employee relationship which neither of them seems to have found very gratifying.

Ms. Stewardson said that she was “patrolling” the area near Dr. Ali’s office when [Patient 2] was having her discussion with him, in order to ensure that he remained on task. She initially also said that she was being particularly vigilant because a letter from the College had indicated that [Patient 1] had made a complaint against him; in cross-examination she admitted this could not have been a motivation, because the letter from the College was not sent until August 29. Ms. Stewardson said she heard snatches of their conversation, including the exchange about cars that both Dr. Ali and [Patient 2] reported, and a statement from Dr. Ali that he was happy with his staff. Ms. Stewardson did not claim to have heard the entire conversation, and was not really in a position to say what course the discussion took other than the brief extracts she overheard.

Dr. Ali claimed to be outraged by the suggestions [Patient 2] had made, yet he did not bring the appointment to an end, and at the end of the session, he indicated that she should come back and see him in a week. At the very least, Dr. Ali would be expected to appreciate that the kind of behavior he attributed to [Patient 2] posed a significant risk to him and that he should sever any ties with her.

We have concluded that the conversation more closely followed the path described by [Patient 2] rather than that set out in Dr. Ali’s testimony. We find that Dr. Ali engaged in unbecoming, improper, unprofessional or discreditable conduct as described in section 46 (p) of the *Medical Profession Act, 1981* by making sexualized comments to [Patient 2] in their meeting of August 25, 2011 which fell within the scope of the definition of “sexual impropriety” in bylaw 8.1 (b) (xvi).

### **Charge Number 3 – [Patient 3]**

[Patient 3] testified that she had been a patient of Dr. Das, and had seen Dr. Ali a number of times when Dr. Das was not available. Her primary medical issue was the pain from her back, and through the period she was seeing Dr. Ali, he was making serial efforts to identify an effective treatment for the pain. In the course of her visits to Dr. Ali, he began to tell her about his personal life, and told her about his financial and family problems and his relationship with his girlfriend, which she understood to be somewhat troubled. She said that her training as a social worker prompted her to lend a sympathetic ear, and to offer advice about some of his personal issues. At the visit on June 9, 2011, things took a somewhat different turn, as Dr. Ali began asking her personal questions about her romantic life, and the appointment ended with him trying to kiss her.

Dr. Ali also said that he and [Patient 3] had some conversations about his private life, but according to him, she was the one who initiated it by asking him personal questions, and he finally told her about his girlfriend in order to signal that he was not available for a relationship. He denied that he had tried to kiss [Patient 3].

Dr. Ali’s version of his interactions with [Patient 3] was supported by the testimony of Ms. Ross, who described [Patient 3] as “going after” Dr. Ali and interested in a romantic relationship with him. Ms. Ross also said that sometime in the fall of 2011, after she had filed a complaint with the College, [Patient 3] told her there was “money to be made” in human rights complaints, and that she was planning to “take” Dr. Ali by filing such a complaint. Ms. Ross said [Patient 3] asked her to support this by stating falsely that [Patient 3] had complained to Ms. Ross about Dr. Ali’s conduct shortly after it occurred on June 9. Our assessment of Ms. Ross is that she was not a credible witness. She stated clearly that her purpose in testifying was to “stand up” for Dr. Ali; she regarded him as a fine doctor and admired the work he had done in Aboriginal communities. We are of the view that her wish to vindicate Dr. Ali influenced her testimony.

It was also clear that there was bad blood between her and [Patient 3], whom she described as a “liar and a troublemaker.” This seems to have arisen primarily from the friction between [Patient 3]’s brother and

Ms. Ross' son, and also from the allegations [Patient 3] made concerning the drug use and drug dealing in Ms. Ross' household. [Patient 3] also suggested the antipathy Ms. Ross felt towards her might have arisen because she had been required to fire Ms. Ross when they were working at Statistics Canada, and she had been unable to do anything for Ms. Ross when she was fired from Cree Land.

Whatever its origins, the open hostility Ms. Ross felt towards [Patient 3] casts doubt on her ability to recall things objectively. [Patient 3] was more circumspect about Ms. Ross, although in cross-examination she admitted that there were tensions in their relationship over the relationship of the two young men, and the allegations of drug use.

At the time Dr. Ali saw [Patient 3] in June 2011, he was experiencing stress related to his personal relationships and financial circumstances, as well as to his interactions with the College of Physicians and Surgeons. Members of his staff testified that they knew something about these problems, as he complained about his problems to them or in their hearing. It is believable, given his admitted state of fatigue, stress and poor health, he might have yielded to the impulse to articulate these complaints to his patients, particularly if he found a sympathetic audience, as he appears to have in [Patient 3]. If the testimony of Ms. Ross is suspect as we believe it to be, it is somewhat less believable that [Patient 3] would instigate a discussion of Dr. Ali's personal life. In addition, Dr. Ali testified that he responded as crisply as possible to her inquiries, and that he only told her about his girlfriend to bring these inquiries to an end; yet it is difficult to understand how [Patient 3] would know what she knew about Dr. Ali's personal life without some fairly extensive revelations on his part. We find that Dr. Ali rather than [Patient 3] was responsible for starting down the path of discussion of his personal life.

[Patient 3] expressed some embarrassment and a sense of guilt about her role in allowing discussion of Dr. Ali's personal life to occur when she went to see him about her medical condition. She conceded that she understood that this kind of discussion was not relevant to her medical treatment and raised issues about the boundaries of his professional relationship with her. [Patient 3] was well-educated and articulate, and she acknowledged that her readiness to entertain these discussions, and to offer advice, did not show good judgment.

It is true that [Patient 3] should probably have known better than to become involved in a discussion with her physician of his personal problems. On the other hand, in this relationship, the rules of the medical profession establish clear expectations about the boundaries that doctors are to observe with their patients, and a physician is responsible for ensuring that the boundaries are not transgressed.

We find that Dr. Ali did engage in discussion of his personal life with [Patient 3], although none of this discussion had anything to do with her medical condition. We also find that on June 9, he asked her invasive questions about her personal life; again, this did not have any link to the medical condition for which she was seeking treatment. This latter aspect of their conversations concerning her own romantic life, falls within the scope of the definition of "sexual impropriety" in bylaw 8.1 (b) (xvi), and we find that both the aspects of the conversations concerning his personal life and those concerning her personal life constituted conduct unbecoming, improper, unprofessional or discreditable.

We have concluded that the College has met the burden of showing that Dr. Ali discussed his personal and financial problems with [Patient 3] and also that he asked [Patient 3] questions about her own dating practices. Pursuant to sections 46 (o) and 46 (p) of the *Medical Profession Act, 1981*, we find that these aspects of charge number 3 have been established.

With respect to the allegation in charge number 3 that Dr. Ali attempted to kiss [Patient 3] at the end of her meeting with him, we find that the allegation has not been established in the balance of probabilities. The room in which the appointment occurred was extremely small. Dr. Ali testified that when both he and

[Patient 3] stood up at the end of their conversation, he had a file in his hand. He moved to reach past [Patient 3] to put this file in the rack on or near the door and also to open the door for her. [Patient 3] said she also reached for the door handle to open the door, and at this point Dr. Ali “pulled her in” and tried to kiss her, an attempt she evaded. It is hard to imagine from the configuration of the room that both Dr. Ali and [Patient 3] could move towards the door in the way they described without coming into physical contact, and we accept that some contact between them did take place. We are not certain that Dr. Ali did not try to kiss [Patient 3], but we think it possible that she misinterpreted what he was doing given the tenor of their recent conversation.

- To summarize: Charge number 1: We find that the College has met the burden of establishing that Dr. Ali is guilty of this charge.
- Charge number 2: We find that the College has satisfied the burden of establishing that Dr. Ali is guilty of this charge.
- Charge number 3: We find that the College has met the burden of establishing those aspects of the charge relating to inappropriate conversation about Dr. Ali’s personal life and [Patient 3]’s personal life, but not that aspect of the charge related to the allegation that Dr. Ali tried to kiss [Patient 3].
- Charge number 4: Dr. Ali pled guilty to this charge,

Counsel for both parties pointed out that section 52 of the *Medical Profession Act, 1981* permits this Committee to make recommendations to the Council of the College of Physicians and Surgeons, and that these might include recommendations with respect to the sanctions that should be imposed on Dr. Ali (though counsel for Dr. Ali indicated that he would like an opportunity to make representations to the Committee before we formulate specific recommendations concerning penalties).

We have decided that we are unable to make any meaningful recommendations with regard to the appropriate penalties for the infractions we have found that Dr. Ali committed. It was clear from the evidence, including the testimony given by Dr. Ali, that he has had other interactions with the College and that these interactions may have included other complaints against him. We know nothing about these other interactions with the College, and did not take them into account in reaching our conclusions, other than what we have said about the undertaking given by Dr. Ali which was the basis of the chaperone policy. It is difficult to estimate how any other complaints or interactions with the College would affect the assessment of what would be appropriate in terms of sanctions, and we therefore refrain from recommending any specific penalty or penalties.

We will comment generally, however, on the nature of the offences we have found Dr. Ali to commit, in the hope that these comments will be helpful in deciding an appropriate outcome from this stage of these proceedings. We have found that the College succeeded in proving allegations against Dr. Ali that he infringed the privacy and dignity of [Patient 1], and that he was guilty of sexual impropriety in relation to [Patient 1], [Patient 2] and [Patient 3]. There was no issue of sexual assault or a consensual sexual relationship raised by these complaints. The complaints were rather based on accusations that Dr. Ali crossed appropriate professional boundaries and that he sexualized what should have been purely professional relationships. In the case of [Patient 1], the nature of her medical issues necessitated discussion of her personal life and of intimate issues; she and Dr. Ali had succeeded in keeping exchanges of this kind in a satisfactory professional framework until August 12, 2011, when Dr. Ali crossed the acceptable boundaries of their relationship by introducing a new and unacceptable element into that relationship. [Patient 2] initiated discussion of possible employment, and this was apparently the impetus

for a discussion which quickly exceeded the bounds of professional decorum, and Dr. Ali was responsible for appreciating this. [Patient 3] felt embarrassed about permitting discussion of Dr. Ali's personal life to take place, but Dr. Ali was responsible for ensuring that the relationship with [Patient 3] stayed on an appropriate plane. All three complainants were self-possessed and articulate women, but this does not provide a justification for Dr. Ali's conduct towards them. All three sought to rely on Dr. Ali's professional expertise to assist with the solution of medical problems, and all three were plainly shocked by Dr. Ali's failure to respect the boundaries of the relationship they reasonably expected to have with him. We are of the view that the nature of Dr. Ali's infringements of professional expectations must be taken into account in assessing penalties against him.

DATED at Saskatoon the 7<sup>th</sup> of December, 2012.

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Beth Bilson, Q.C., Chair  
Disciplinary Hearing Committee

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Dr. Bruce Reeder, Member  
Disciplinary Hearing Committee

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Dr. Chris Ekong, Member  
Disciplinary Hearing Committee

