

**IN THE MATTER OF THE *MEDICAL PROFESSION ACT, 1981*,
R.S.S. 1980-81, C. M-10.1, AND**

**DR. AMJAD ALI,
MEDICAL PRACTITIONER FORMERLY OF
THE VILLAGE OF STONY RAPIDS, IN THE
PROVINCE OF SASKATCHEWAN**

**HEARING OF THE DISCIPLINARY HEARING COMMITTEE
OF THE COLLEGE OF PHYSICIANS AND SURGEONS
OF SASKATCHEWAN**

**Saskatoon, Saskatchewan
November 22, 2004**

**Before: Walter Matkowski, Deputy Chair
Dr. Margaret Bartsch
Dr. Brenda Hookenson
Dr. Lionel Lavoie**

**Counsel: Gwen V.G. Vanstone, for the College of Physicians and Surgeons
Richard W. Elson and Curtis Onishenko for Dr. Amjad Ali**

Decision

The Council of the College of Physicians and Surgeons had directed that the Disciplinary Committee hear and determine the following disciplinary charges brought against Dr. Amjad Ali.

Charge #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 44 and/or bylaw 51(2)(2)(q) of the bylaws of the College of Physicians and Surgeons in relation to your conduct with a patient, A.S. on or about August 7, 2003.

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

- a) On or about the 7th day of August, 2003, you attended on a patient, identified in this charge by the initials A.S.;
- b) You remained in the examination room while A.S. disrobed for the purpose of a pelvic examination; and or
- c) You did not offer A.S. a gown or sheet to allow her to be covered; and/or
- d) You watched A.S. while she disrobed; and/or
- e) You allowed your genital area to rub against A.S.'s foot on two occasions while she was on the examining table; and/or
- f) While performing a pelvic examination on A.S. you moved your fingers in and out of A.S.'s vagina; and/or
- g) While performing the pelvic examination you rubbed your fingers against her labia and clitoris; and/or
- h) You remained in the room while A.S. was dressing; and/or
- i) You watched A.S. while she was dressing; and/or
- j) You asked A.S. if she had a boyfriend; and/or
- k) You invited A.S. to stay with you at your home in northern Saskatchewan.

Charge #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 44 and/or bylaw 51(2)(2)(q) of the bylaws of the College of Physicians and Surgeons in relation to your conduct with a patient, A.S. on or about August 9, 2003.

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

- a) On or about the 9th day of August, 2003 you attended on a patient, identified in this charge by the initials C.S.;
- b) C.S. attended upon you in connection with an injury to her hand;

- c) During your interaction with C.S., you commented about your own sexuality; and/or
- d) During your interaction with C.S., you commented that she was overweight; and/or
- e) During your interaction with C.S., you asked her whether she had a boyfriend; and/or
- f) During your interaction with C.S., you stated that she was overweight because she was lonely and that she needed a man to look good for, or used words of similar meaning; and/or
- g) During your interaction with her, you commented that you like to spend time with a woman making love to her, or used words of similar meaning.

Charge #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 51(2)(2)(r) of the bylaws of the College of Physicians and Surgeons in relation to your conduct with an individual identified in this charge by the initials S.O.

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

- a) S.O. worked as a technician in Stony Rapids, where you were then practicing medicine, from approximately June 30, 2003 to August 24, 2003;
- b) During this period of time you repeatedly made request of her to engage in personal activities with you, such as fishing, seeing the bears and coming to your home to watch television; and/or
- c) You persisted in asking her to engage in personal activities with you despite her refusals; and/or
- d) On at least one of those occasions, you made a statement to S.O. “you’re not married are you” or used words of similar meaning; and/or
- e) On one occasion, you commented to S.O. that what she needed was some good loving, or used words of similar meaning; and/or
- f) On or about July 14, 2003 you asked S.O. to your home for a meal. She advised you that she did not want to do so and that you were “freaking her out and needed to stop it” or used words of similar meaning; and/or

- g) On or about July 25, 2003 you asked S.O. whether a mark on her neck was a hickey, or used words of similar meaning; and/or
- h) On or about July 25, 2003 you stated to S.O. that she would probably rather have hickeys down there (in reference to her genital region) or used words of similar meaning.

At the hearing, Dr. Ali plead not guilty to all charges.

Relevant Statutory Authorities

“Section 46(o) of *The Medical Profession Act, 1981* provides 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 or the temporary register is guilty of unbecoming, improper, unprofessional or discreditable conduct, where he:

- (o) does or fails to do any act or thing where the discipline hearing 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.

Sections 44(2) and 51(2)(q) and (r) of the Bylaws provide as follows:

44(2) Contravention of or failure to comply with the Code of Ethics is unbecoming, improper, unprofessional or discreditable conduct for the purpose of the Act.

51(2) The following acts or failures are defined to be unbecoming, improper, unprofessional or discreditable conduct for the purpose of clause 46(p) of *The Medical Profession Act, 1981* (hereinafter “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 clause 46(o):

- (q) committing an act of sexual impropriety with a patient or an act of sexual violation of a patient.
- (r) committing an act of sexual harassment in the physician's professional capacity.

The terms "sexual impropriety" and "sexual violation" are defined as follows in section 51(1)(g) of the Bylaws:

51(1) In this section:

- (g) "sexual impropriety" and "sexual violation" include, but are not limited to:
 - (i) acts or behaviors 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;
 - (ii) making sexualized or sexually demeaning comments to a patient;
 - (iii) requesting details of sexual history or sexual likes or dislikes when not clinically indicated;
 - (iv) making a request to date a patient, or dating a patient;
 - (v) initiation by the physician of conversation regarding the sexual problems, preferences or fantasies of the physician;
 - (vi) kissing of a sexual nature with a patient;
 - (vii) physician-patient sex whether initiated by the patient or not;
 - (viii) 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;

- (ix) touching any sexualized body part of the patient where the patient has refused or withdrawn consent;
- (xi) sexual acts by the physician in the presence of the patient.”

Introduction:

The three charges brought forward by the College as against Dr. Ali were heard by the Disciplinary Hearing Committee (hereinafter “the Committee”) at Saskatoon, in the Province of Saskatchewan, on October 13, 15, 16 and 17, 2004.

The College called one witness in regard to Charge #1, two witnesses in regard to Charge #2 and three witnesses in regard to Charge #3. Dr. Ali testified on his own behalf and called one witness in regard to Charge #1. Counsel for Dr. Ali did not request that each of the three charges be dealt with by separate Disciplinary Committees. None of the complainants knew any of the other complainants.

Given that the Committee dealt with all three Charges at one Hearing, it treated each charge separately and arrived at a determination based solely on the evidence which was led in regard to each separate charge. The Committee accepted that it must act in a judicial manner and that its reasons must be based on the evidence.

During and after the presentation of evidence, a number of issues arose in regard to the evidence which should be or was provided to this Committee and/or the interpretation of such evidence. Firstly, counsel for the College urged the Committee to utilize the similar fact evidence rule. Counsel for the College provided that the evidence given by each of the three individual complainants in regard to Charge #1, #2 and #3 is supportive of the credibility of each of the other complainants. Counsel argued the evidence of each of the complainants enhanced the probability Dr. Ali did what the individual complainants allege he did.

In the decision *Deitel v. College of Physicians and Surgeons of Ontario* [1997] O.J., No. 1866 (Ont. Gen. Division), a physician appealed a finding of professional misconduct as a result of complaints from several patients about the doctor’s sexual misconduct. Both the Committee and the Court held that evidence of the complainants was admissible as similar fact evidence in regard to each complaint. The Court held that there were specific similarities in the evidence of the complainants such as:

- i) DM and SS were both married, of similar age, morbidly obese and patients of Dr. Deitel;

- ii) Both DM and SS underwent gastroplasty or stomach stapling and were both known by Dr. Deitel as vulnerable patients;
- iii) Dr. Deitel made telephone calls to both DM and SS at their homes and made flattering comments to them;
- iv) Dr. Deitel engaged in consensual fellatio with DM and SS, directed each of them to “deep throat” him, did not remove all his clothing, and both incidents occurred in Dr. Deitel’s office.

In the case at hand, there were very few similarities which would justify the use of the similar fact evidence rule. There was no “pattern of behavior which was consistent and strikingly similar” so as to justify utilizing the similar fact evidence rule (see: *Sarah Jane Doe v. Hirt* [1993] B.C.J. No. 1835). The Committee was of the opinion that the probative value of the few similarities did not outweigh the prejudicial effect as against Dr. Ali. The Committee therefore rejects the College’s argument that the similar fact evidence rule should be applied in the case at hand.

Counsel for the College also sought to call a number of witnesses to support the proposition that the complainants had not recently fabricated their testimony. To accomplish this, counsel for the College sought to call witnesses who the complainants had given prior statements. Counsel conceded that the evidence was not being tendered to confirm the truthfulness of the prior statement. (See: *R. v. F. (J.E.)*(1993), 16 O.R. (3d) 1 (Ont. C.A.). Counsel for Dr. Ali provided he was not alleging the complainants had recently fabricated their testimony, but he was taking the legal position the three incidents did not occur. The Committee agreed to hear evidence from witnesses who the complainants had given prior statements to, but the Committee provided it did not want to hear the details of the statements. The Committee did not believe this evidence would assist it in making its credibility determinations and in fact could be prejudicial to Dr. Ali, if the Committee heard the same story from the complainants and anyone who the complainants told their story to. Counsel for Dr. Ali conceded that his questions in cross-examination could open the door for this Committee to hear more evidence from these witnesses, but this did not occur.

NonSuit Motion of Dr. Ali

Counsel for Dr. Ali in effect brought forward a nonsuit motion in regard to Charge #1, paragraphs (d)(f)(g) and (i), which provided that:

“Charge: 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 44 and/or bylaw 51(2)(2)(q) of the bylaws of the College of Physicians and Surgeons in relation to your conduct with a patient, A.S. on or about August 7, 2003.

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

- d) You watched A.S. while she disrobed; and/or

- f) While performing a pelvic examination on A.S. you moved your fingers in and out of A.S.'s vagina; and/or
- g) While performing the pelvic examination you rubbed your fingers against her labia and clitoris; and/or
- i) You watched A.S. while she was dressing; and/or

Counsel for Dr. Ali argued there had been no evidence led by the College to substantiate the particulars provided in paragraphs (d) and (i). Counsel for the College agreed. In regard to paragraphs (f) and (g) of the Charge, counsel for Dr. Ali was of the view that it was incumbent upon the College to call expert evidence in regard to how a pelvic exam is performed.

At the hearing, the Committee provided the following verbal ruling:

“Counsel for Dr. Ali suggests that there has been no evidence led by the College to substantiate the particulars provided in paragraphs (f) and (g) of Charge #1. With respect, this Committee disagrees. Without limiting the College's arguments in this case, the Committee observed A.S. testify at great length about what transpired when she met Dr. Ali for a medical appointment on August 7, 2003. A.S. testified that based on a sequence of events which occurred as between herself and Dr. Ali, that Dr. Ali's behavior was inappropriate and laced with sexual overtones.

This sequence of events which began with A.S. undressing in the presence of Dr. Ali and concluding with Dr. Ali asking A.S. to come and visit him at his home in northern Saskatchewan, provides some evidence which this Committee can consider in regard to Charge #1.

To be clear, the Committee makes no comment in regard to the weight of the evidence presented by the College in regard to Charge #1. So long as there is some evidence presented by the College, the nonsuit motion must be dismissed.

While counsel for the College concedes that there was no evidence presented in regard to particulars (d) and (i), as stated earlier, there still remained evidence presented by the College which could substantiate Charge #1.

The Committee will provide additional reasons in its final written decision which will include reference to the numerous legal cases as provided by counsel.”

Counsel for Dr. Ali had argued in order to prove paragraphs (f) and (g) of Charge #1, the College was required to call expert evidence dealing with pelvic examinations. This evidence was necessary so that the Committee would understand “the standard of practice necessary in conducting a pelvic examination”.

Counsel for Dr. Ali also provided the Committee must consider Bylaw 51(1)(g)(vii) which provides:

“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.”

Counsel for Dr. Ali argued Bylaw 51(1)(g)(vii) stipulates that “a sexual impropriety or violation cannot be found where there has been touching of a sexualized part of a patient’s body for the purposes of an appropriate examination or treatment.”

Finally, counsel for Dr. Ali argued this Committee would make the same mistake as the Committee had been found to have made in the decision *Huerto v. College of Physicians and Surgeons* [1994] S.J. No. 390 (hereinafter *Huerto #1*) if it utilized it’s medical expertise and knowledge in regard to pelvic examinations.

In *Huerto #1*, supra, Mr. Justice Halvorson states at 7:

“When the committee stated initially that it “did not agree that the proper standard of care in any case was to be determined solely on the basis of the expert evidence testimony” that would be correct if the committee meant it must consider all the evidence, not just the expert’s opinion. But, if the committee meant it was entitled to determine the standard of care by supplementing the evidence with its own medical knowledge, serious problems arise...The Committee had evidence from expert cardiologists as to the standard expected of a cardiologist like Dr. Huerto. The Committee members are not cardiologists. It would be inappropriate to allow them to impress on the evidence, their private views of the standards demanded of a cardiologist.”

As set out in the Committee’s verbal ruling, without commenting in regard to the weight of the evidence presented by the College, there was some evidence presented by the College to substantiate paragraphs (f) and (g) of Charge #1. A.S. gave testimony about a sequence of events that occurred on August 7, 2004 between herself and Dr. Ali that the College alleges were inappropriate. The College did not allege the pelvic examination was not medically called for. However, given the facts that occurred both prior and subsequent to the pelvic examination and A.S.’s testimony about what occurred during the examination, there existed some evidence to substantiate the College’s claim Dr. Ali was guilty of unbecoming, improper, unprofessional or discreditable conduct.

No expert evidence was required to be presented by the College as the Committee was entitled to consider A.S.'s testimony as to what occurred at the examination. This Committee does not require expert evidence to substantiate that a pelvic exam should not have any improper sexual elements associated with it.

Finally, a Committee is entitled to utilize its medical knowledge and expertise. (See: *Green v. College of Physicians and Surgeons of Saskatchewan* [1986] S.J. No. 723, Sask.C.A. at 6). In *Huerto v. College of Physicians and Surgeons of Saskatchewan* [2004] S.J. No. 550, (hereinafter *Huerto #2*) Madame Justice Smith states at 7:

“...for this issue engages the expertise of the Committee, as it is structured, and, indeed, the ability of the Committee to bring its experience and expertise to bear on this issue must be seen as one of the principal reasons that disciplinary decisions are left by the legislature to the professional self governing body.”

This is not a situation where the Committee is supplementing expert evidence with its own medical knowledge as was Mr. Justice Halvorson's concern in *Huerto #1*, supra. This is a case where the Committee must assess whether there were any improper sexual elements or aspects associated with Dr. Ali's examination of A.S.

Burden of Proof for Disciplinary Charges in Saskatchewan

Counsel for the College accepted the burden of proof rests upon the College to produce “cogent evidence”, “well-founded evidence” or “credible testimony” to establish the allegations against Dr. Ali. Both counsel presented numerous cases that supported the proposition the burden of proof rests upon the College to produce this cogent evidence.

This committee accepts the recent pronouncement on the issue of the standard of proof for disciplinary charges in Saskatchewan as set out in the decision *Hanna v. College of Physicians and Surgeons of Saskatchewan* [1999] S.J. No. 334. In *Hanna*, supra, Mr. Justice Baynton provides at 5:

“¶ 14. The parties disagree as to the appropriate standard of proof that applies to charges heard by a disciplinary hearing committee. Courts have from time to time utilized different terminology to describe the standard of proof in any given situation. In my view there is but one standard of proof in a civil case, and that is on a balance of probabilities. Even when serious allegations are involved, the standard of proof does not shift to proof beyond a reasonable doubt as is the standard in a criminal case. I adopt the reasoning and the authorities relied on by Klebuc J. in dealing with this issue in *Westfair Foods Limited (Superstore) v. United Food and Commercial Workers, Local 1400*, and *Laurie Stewart*, [1998] S.J. No. 822 (Q.B.

1117 of 1997, J.C.S., November 13, 1998). He concludes in effect that the standard of proof does not shift but what constitutes cogent evidence will vary from one case to another depending on the nature of the matter to be established.”

Charge #1

Facts – Charge #1

Both parties agreed that on or about the 7th day of August, 2003, Dr. Ali attended on patient A.S. and conducted a pelvic examination on A.S. and that no attendant nurse was present during the examination. It was agreed Dr. Ali asked A.S. whether she had a boyfriend and that Dr. Ali had some discussions with A.S. about his home in northern Saskatchewan, though when these discussions occurred was in dispute. In regard to most of the other events of that evening, there was certainly a large amount of disagreement as between A.S. and Dr. Ali as to what transpired.

A.S. is 25 years of age. She is a high school graduate and has gone to University for approximately one and a half years, taking nutrition classes. She has been in a common-law relationship for the past 4 years. She has been treated off and on for depression for approximately the last 10 years. She had been taking the drug Effexor to help her deal with her depression. When she is suffering from depression, she can feel lethargic, anxious, tired, useless and she wants to retreat from the world. She had not been taking Effexor immediately prior to her appointment on August 7, 2003.

On August 7, 2003, A.S. attended at a medical clinic feeling nauseated and having experienced a vaginal discharge which she had brought to the clinic in a little plastic bag. Dr. Ali attended to her at the Medi-Clinic and asked her why she was there. A.S. advised Dr. Ali of her symptoms. Dr. Ali asked if she was pregnant, to which she advised “no” and she advised Dr. Ali that she had recently stopped taking birth control pills and that her boyfriend used a condom. Dr. Ali asked if she had sex with anyone other than her boyfriend. She replied she had not. A.S. testified Dr. Ali asked to examine her abdomen, which he did. She had no complaints about this process until Dr. Ali asked her to take off her pants and underwear. A.S. testified Dr. Ali didn’t leave the room and didn’t offer her a sheet or robe while she undressed. Dr. Ali didn’t ask her if she wanted anyone else in the room during the examination. A.S. testified after waiting for Dr. Ali to leave, she decided she was being too shy and went along with Dr. Ali’s request, like everything was o.k. A.S. testified Dr. Ali was 3 or 4 feet away from her when she undressed and she wasn’t looking at him and couldn’t see if Dr. Ali was looking at her. Once A.S. had removed her pants and panties she pulled herself up to the bed and placed one foot in the stirrup and put her left foot against the wall.

A.S. testified Dr. Ali obtained some gloves out of a cabinet and when he walked past her, his body rubbed up against her foot. This occurred on two occasions.

A.S. testified Dr. Ali performed a pelvic exam, a rectal exam and then another pelvic exam. During these examinations, A.S. testified Dr. Ali took a swab and advised her she might have a yeast infection. She testified that during the pelvic exam, he moved his fingers in and out three or four

times, hard and fast. She testified that during the second pelvic examination, he spread her labia and touched her clitoris, though not for a long time.

A.S. testified Dr. Ali didn't explain any of the procedures and she was very uncomfortable and embarrassed by the entire process. A.S. testified she has had approximately 12 pelvic exams, some of which have involved a metal speculum. She testified that at the examinations where the metal speculum had been used, they are hard to forget because it's "cold", "hurts" and "feels uncomfortable". A.S. testified it was her belief Dr. Ali did not use a speculum during the pelvic examination.

A.S. also testified that during all her other pelvic examinations, doctor's tried to ease her discomfort by letting her know what was happening. They also ensured she was covered and the doctor had never stayed in the room while she undressed.

Following the examinations, A.S. testified Dr. Ali advised her to get dressed. He did not leave the room while she dressed and she did not observe what he was doing while she got dressed. Dr. Ali then asked her to follow him to his office, gave her a swab to take to a lab for analysis and proceeded to have a discussion with her about northern Saskatchewan. A.S. testified Dr. Ali advised her she should come up north and stay with him and that Dr. Ali was "very deliberate". A.S. testified she was creeped out and thought he was joking. Dr. Ali then advised her he hoped she felt better and left the room.

A.S. testified she left the office and went to her boyfriend, who was waiting for her in the clinic. A.S. advised her boyfriend she thought Dr. Ali was hitting on her.

A.S. then wrote out at approximately 11 p.m. on August 7 what occurred:

"Thursday, Aug. 7.03

9:35 p.m. I saw Dr. A. Ali, complaining of pain and cramps in my stomach. I told him that I have irritated bowel syndrome but the pain is difference this time. He asked if I could be pregnant. I told him I've just stopped taking birth control but used a condom last time we had sex. I told him I'd been w/ boyfriend over three years. He asked if I'd ever had sex with anyone else than him. He said he wanted to exam my abdomen and asked me to lie down and undo my pants. I did. He used his hands and pressed around my abdomen. He then told me to take off my pants and underwear and lie back down, but he did not leave the room. I dismissed my nerves as silly and did as he asked. I put my foot in the sturreps. He put on gloves and used his fingers to exam me. It seemed strange that he pumped his fingers in and out a few times all the way in but he told me I may have a yeast infection. He also wanted to do a rectal exam. He put lubricant on the gloved and I lied on my side. He said there was no stool. He then put on new gloves and examined my vagina again inside and around

my labia and clitoris. He finished and told me to get dressed and he did not leave. I met him in his office. He made small talk asked me where I worked. He told me he was from Ontario and in Regina for a short time. He was moving to Stoney Rapids to work at the University.

He asked me if I'd ever been up north. I said yes. He told me I'd like Stoney Rapids and that I should come visit and stay at his house because he lived alone. He said his house is beautiful and he lives alone. I smiled and nodded at first I didn't think he was serious b/c no doctor had ever said such a thing. He gave me the swab and told me to bring it to the lab in the morning and he said I hope you feel better come back on Sat or Sun if you don't.

He asked me if I like to go out a lot. I said no not really. He said, "Do you have a boyfriend." I had already told him I did.

While I was lying down he walked over to get gloves his crotch brushed up against my foot. I figured he did not have enough room. Now I wonder if he was rubbing against me on purpose. I now wish I had acted on my discomfort asked him to leave while I got dressed and undressed and told him how inappropriate it is to ask me to visit him at his house."

A.S., on a later date, typed out a further report of what occurred on August 7, 2003 and provided the following document to the College which was date stamped by the College as having been received on August 13, 2003:

"I would like to make a complaint of sexual harassment. I will describe the events of my visit and if the doctor did not follow procedure I add sexual assault to my complaint.

I attended the ABC Medical Clinic on Thursday, Aug. 07, 2003 at 9:30 pm. I had an upset and achy stomach, and cramps. Dr. Ali was the physician that saw me. I told him I have irritable bowel syndrome but my stomach had been upset every time that I ate, which was not normal.

I was very uncomfortable during the examination but dismissed my feelings as shyness, until the doctor asked me into his office. At first he made small talk. He asked where I work, and if I like to go out at night. When I told him I spend most of my time with my boyfriend he told me he was from Ontario and was moving to Stony Rapids. He then told me that I would like it there and that I should come to visit him. He said that I could stay with him at his home because he

lives alone, and that once I was there I may never want to leave. No doctor had ever suggested I see him outside of the office. I felt stunned.

When I left I began remembering my discomfort during the exam. He asked me to lie down and undo my pants so he could feel my abdomen. Then he just put his hands on me and felt around my abdomen. He then told me to take my pants off so he could do a vaginal exam, but he did not leave the room. Every other exam I've had the doctor left the room while I got undressed and gave me a sheet to cover myself. Dr. Ali did neither. He put on gloves and came over to the table while I was fully exposed his groin area brushed up against my foot. I thought maybe the table was too close to the wall and he did not have enough room. He brushed up against me a couple more times so I began moving my foot away whenever he came near. He inserted two fingers into my vagina all the way and moved them in and out three or four times very quickly (it felt the way my boyfriend would touch me). He told me that I might have a yeast infection. He took a swab. He then told me to lie on my side because he wanted to do a rectal exam. He put on gloves and inserted his finger into my rectum. He then told me to roll onto my back. He put on gloves again and put his fingers into my vagina and then moved his fingers around my labia and clitoris. When he finished he told me to get dressed without leaving the room again. I felt humiliated my clothes were lying on the floor and I had to just stand there in front of him while I put my panties and pants back on. He provided me with a prescription. We went into his office and that is when he invited me to come visit him. He was so busy talking that I left without taking the swab for the lab. He called me back in and then filled out the lab forms.

I left his office thinking of how strange the exam seemed. Having him hit on me after having me at such a vulnerable position made me feel sick. I am afraid he touched me that way for his own reasons, as a man and not as a doctor. Later that night I began crying. I felt so upset that I called a friend to get another perspective. I do not know what the proper procedure is for doctors regarding pelvic exams, but this exam felt wrong to me. Whether he enjoyed touching me is hard to say, but he invited my suspicion by suggesting a personal relationship.

Expectation of investigation:

I want for him to never be able to make anyone feel the way I feel right now. I hope his new employer is made aware of this complaint and if this is not an isolated incident he should have his license

suspended or revoked. He needs counseling regardless of what happens to him professionally. I have made a statement to the local police department regarding this complaint.”

A.S. testified she was aware there was a sign in the patient room of the Medi-Clinic on August 7, 2003, which provided as follows:

“Pelvic examinations are a routine procedure in our office. If you would like a nurse or support person of your choice present during your examination, please inform the doctor”.

Dr. Ali’s recollection of what occurred on August 7, 2003 was markedly different from that of A.S. Dr. Ali testified he initially attempted to locate a nurse so that she could attend at the pelvic exam. Dr. Ali testified the nurse was unavailable and he decided to conduct the pelvic examination without the nurse being present. He testified he will never make that mistake again and that it was an error in judgment on his part.

Dr. Ali obtained information from A.S. by asking questions about whether she could be pregnant, whether she had any infections, vaginal bleeding and asked questions about her sexual activity. Dr. Ali testified A.S. did not provide to him any vaginal discharge sample and he believed if she had, he would have remembered it. While Dr. Ali was obtaining A.S.’s history, she commented he was “new” to the clinic. Dr. Ali confirmed he was temporarily working at the Medi-Clinic and that he normally was working in Stony Rapids. Dr. Ali testified he was surprised A.S. was familiar with Stony Rapids and he remarked how beautiful it was in northern Saskatchewan. Dr. Ali testified he stated words to the effect if she had a chance she should come visit him. Dr. Ali denied he asked her to come and stay with him in Stony Rapids.

Dr. Ali testified that following his examination of her abdomen, he gave A.S. a gown. Dr. Ali testified he was not present when A.S. undressed or got dressed after the examinations. He testified he never asked A.S. to unrobe without a cover and that it would be wrong if he had done this. Dr. Ali testified the Medi-Clinic closed at 10 p.m. and that it was approximately 9:50 p.m. when he performed the pelvic examination on A.S.

Dr. Ali provided textbook testimony in regard to how he performed the rectal exam and pelvic exam. He testified he used a plastic speculum which is the only type of speculum which the Medi-Clinic used and carried. He denied any improper contact by himself towards A.S. He testified it was possible, because of the setup of the room at the Medi-Clinic and the location of the bed, that when he moved from the front of the bed to obtain the gloves he brushed A.S.’s foot. He also testified while he did not believe it occurred, it is possible when performing the pelvic exam he inadvertently touched A.S.’s clitoris.

The nurse who worked at the Medi-Clinic on August 7, 2003, provided testimony to the Committee. While she had no specific memory of what occurred on August 7, she checked clinic records which indicated she would have been unavailable for a portion of the evening to assist Dr. Ali because she had to perform an injection. She also testified that the Medi-Clinic used plastic speculums only.

Analysis Charge #1

This Committee found A.S. to be an extremely credible witness and accepts the evidence of A.S. over Dr. Ali's and finds that Dr. Ali remained in the examination room on August 7, 2003, while A.S. undressed. This Committee accepts the evidence of A.S. over Dr. Ali's and finds Dr. Ali did not offer A.S. a gown or a sheet to allow her to be covered and finds Dr. Ali remained in the examination room while A.S. was dressing following the pelvic examination. This Committee accepts the evidence of A.S. over Dr. Ali's and finds Dr. Ali asked A.S., following the examinations, whether she had a boyfriend and whether she wanted to come and visit him in northern Saskatchewan and stay with him.

As stated earlier, there was no evidence presented Dr. Ali watched A.S. while she disrobed or while she redressed following the examinations. In regard to paragraph (e) of Charge #1, Dr. Ali conceded it was possible that his body rubbed against A.S.'s foot while he moved from the examination table to obtain gloves. A.S.'s notes of the August 7, 2003 examination, which were prepared almost immediately after the examination, describe the incident "as he walked over to get gloves his crotch brushed against my foot. I figured he did not have enough room. Now I wonder if he was rubbing against me on purpose".

As can be seen from these notes, A.S. herself is not sure whether Dr. Ali brushed up against her foot inadvertently because he did not have enough room or for some improper purpose. As such, the elements in paragraph (e) have not been proven.

In regard to paragraphs (f) and (g) of the Charge, Dr. Ali's testimony before the Committee coincided with a textbook pelvic examination. A.S.'s August 7, 2003 letter provided that "he put on his gloves and used his fingers to examine me. It seemed strange that he pumped his fingers in and out a few times, all the way in but he told me I may have a yeast infection." In her letter to the College, A.S. provided that the "exam felt wrong to me."

A.S. testified she did not believe a speculum was used for the pelvic examination. A.S. provided she had experienced metal speculums during previous pelvic exams and that she was familiar with when a speculum is used. During cross-examination, A.S. testified it was possible Dr. Ali had performed the pelvic examination using a plastic speculum.

Dr. Ali testified that only plastic speculums were utilized for pelvic exams at the clinic. This testimony was confirmed by the nurse. It is therefore possible the pelvic exam felt strange to A.S. because Dr. Ali utilized a plastic speculum, not a metal speculum. The evidence in regard to

paragraph (f) of Charge #1 was not clear and convincing and therefore, the elements in paragraph (f) have not been proven.

In regard to paragraph (g), Dr. Ali conceded it was possible during the pelvic exam he brushed A.S.'s clitoris inadvertently. A.S.'s August 7, 2003 letter provides "he then put on new gloves and examined my vagina again inside and around my labia and clitoris." At that point she had no complaint about Dr. Ali's examination. It was only after Dr. Ali made questionable comments to her about whether she had a boyfriend and asked her to stay with him in northern Saskatchewan did she begin to question what occurred during her examination. The evidence in regard to paragraph (g) was not cogent or clear and convincing. As such, the elements of paragraph (g) have not been proven.

This Committee finds Dr. Ali guilty of Charge #1 in that he remained in the examination room while A.S. disrobed and he did not offer A.S. a gown or sheet to allow her to be covered. He also remained in the examination room while A.S. was dressing and after the examination was concluded asked A.S. if she had a boyfriend and invited A.S. to stay with him at his home in northern Saskatchewan. Dr. Ali's actions humiliated A.S., showed a lack of respect for her privacy and were seen by A.S. as "hitting on her". Objectively, some of Dr. Ali's actions could be viewed as Dr. Ali attempting to open the door towards a relationship with A.S. In the Committee's opinion, Dr. Ali's actions constitute a breach of the standard of conduct expected of a physician and were improper, unprofessional and amounted to discreditable conduct pursuant to Section 46(o) and (p) of the Act as well as Bylaw 51(2)(2)(q).

Counsel for Dr. Ali argued it made no sense for Dr. Ali to invite A.S. to visit him in northern Saskatchewan as it would be improbable A.S. would spend a great deal of money on a plane ticket to travel to northern Saskatchewan. What this argument ignores is the attempt by Dr. Ali to open the door towards a relationship with A.S., which should never happen.

The College did not prove all of the alleged components of Charge #1. However, Dr. Ali must still be found guilty of Charge #1. So long as some of the paragraphs in Charge #1 have been proven and found by this Committee to constitute unbecoming, improper, unprofessional or discreditable conduct contrary to the provisions of the Act, Dr. Ali is guilty of Charge #1. (See: *Stephen v. College of Physicians and Surgeons of Saskatchewan*, [1989] S.J. No. 665 C.A. No. 9799, Sask.C.A. at 5).

Charge #2

Facts – Charge #2

C.S. is a 26 year-old certified managerial accountant. On August 9, 2003, she attended at a Medi-Clinic after she had injured her hand and was treated by Dr. Ali. Dr. Ali gave her a tetanus shot, cleaned the wound and was preparing to leave. According to C.S., Dr. Ali noticed she had a tensor bandage wrapped around one of her knees. C.S. testified Dr. Ali commented being overweight

would cause arthritis in her knee. Dr. Ali then asked C.S. why she was overweight and about her level of exercise. C.S. testified Dr. Ali asked if she had a boyfriend to which she replied she did not as they had broken up two months earlier. C.S. testified Dr. Ali then stated words to the effect he thought she was overweight because she was lonely. C.S. testified she thought she had to defend herself and advised Dr. Ali that it was worse when she had been with her boyfriend because she ate when they attended movies and went out to dinners. C.S. testified Dr. Ali said words to the effect “that’s not the way a boyfriend should treat you” and that he likes “spending time with his woman making love to her”.

C.S. testified she was “freaked out” and left the Medi-Clinic.

Following her visit with Dr. Ali on August 9, 2003, C.S. made the following complaint to the College of Physicians and Surgeons:

“Re: Complaint for Dr. Ali
XYZ Medical Clinic
(address)

Attention: Dr. Dennis Kendel

This letter is in regards to a recent visit I had to see Dr. Ali on Saturday, August 9th 2003 at approximately 5:15 PM.

The reason for my visit to XYZ Medical Clinic where Dr. Ali (not my regular doctor) was practicing for the day was to receive my tetanus shot. During the visit I received the treatment I required and more then I was prepared for.

I was wearing a tensor on my knee due to a recent knee injury. After I received my shot, Dr. Ali offered additional information, which I did not request, telling me being overweight will cause arthritis in my knee.

Dr. Ali then asked me directly why I was overweight. This topic made me very uncomfortable and caught me off guard since it did not pertain to the reason for my visit. I told him I’m overweight because I ate out a lot, stopped exercising and cooked few meals at home but for the past 3 weeks I have been on an exercise plan and have been eating well and been going to the gym regularly until my recent knee injury.

Dr. Ali proceeded to ask me if I have a boyfriend. I informed him that I recently ended a relationship a couple of months ago. Again, these questions made me very uncomfortable and I was confused since Dr. Ali is a medical professional. Dr. Ali then volunteered to

tell me that I am overweight because I am lonely and I need a man so I have someone to look good for. Then I commented saying I ate out more when I wasn't single because we always went on dates involving eating out, going to movies, etc. Dr. Ali then told me that is not an appropriate type of guy for me to be dating that a boyfriend should pay more attention to me and not do things like movies. Then Dr. Ali mentioned that he likes to spend his time with his woman making love to her.

After hearing that comment I again was more surprised, disgusted and confused. I left the office very upset because of the comments Dr. Ali made about my weight and I felt very uneasy as a result of him mentioning his love life to me and psychologically analyzing me based solely on his assumptions. (I am approximately 25 pounds overweight and not obese.) Dr. Ali is not my regular doctor and I will never return to that office again on the off chance he is working when I require medical attention. I am thoroughly dismayed at these events and have never received such unprofessional and, what I feel is, unethical treatment in my life.

Please let me know if you require any further information or action on my part. Can you also please inform me of the action that will be taken on your part as a result of this letter? Thank you."

C.S. testified she wrote the August 9th letter during the period of time August 11 – 13. C.S. testified her discussion with Dr. Ali upset her in that both were professionals and she believed he crossed the line with his comments. Through cross-examination, she stated she was attending at the Medi-Clinic for her hand injury, not for the issue of her being overweight. C.S. testified that initially, an apology from Dr. Ali would have been sufficient but her position on the apology had changed, because in her opinion, Dr. Ali had not been forthright in his recollection of what happened on August 9th. C.S. testified she did not ask Dr. Ali for any Tylenol 3's and her drug history indicated no use of Tylenol 3's.

A friend of C.S. testified that C.S. called her after C.S.'s appointment with Dr. Ali wanting to know if she thought what had occurred as between C.S. and Dr. Ali was normal.

Dr. Ali's testimony coincides with that of C.S. to some extent. Dr. Ali provided C.S. with a tetanus shot and Dr. Ali did inquire about her weight and make comments about her weight and the effect the extra weight would have on her knee. Dr. Ali recalled making some comments in regard to an exercise program. Dr. Ali testified there were no discussions held with C.S. in regard to her boyfriend, her relationship with her boyfriend, or his relationship with his wife, or his lovemaking with his wife. Dr. Ali testified if he had discussed with C.S. his lovemaking relationship with his wife, that would have been wrong.

Dr. Ali testified C.S. asked for a few Tylenol 3's because of pain she was suffering as a result of a previous knee injury. Dr. Ali testified he refused this request and suggested extra strength Tylenol. According to Dr. Ali, C.S. then got mad at him. Dr. Ali testified he had been warned that in the area where this clinic was located patients sometimes ask for greater drugs than are necessary. Dr. Ali conceded he made no notations in C.S.'s medical chart she had asked for Tylenol 3's.

Analysis – Charge #2

The evidence is uncontraverted that on August 9, 2003, C.S. was treated by Dr. Ali while attending at the Medi-Clinic. The evidence is clear that Dr. Ali made some comments to C.S. in regard to her being overweight and about an exercise program. This Committee finds nothing inappropriate about those comments.

In regard to Dr. Ali making comments to C.S. that she was overweight because she was lonely, his comments to C.S. that he likes spending time with his woman making love to her and his comments as to how C.S. should be treated, the Committee has no hesitation in accepting the evidence of C.S. over that of Dr. Ali. C.S. was a credible, believable witness. C.S. had never met Dr. Ali before and she has no interest in seeing him again in any capacity. She had no reason to misrepresent anything that occurred as between herself and Dr. Ali on August 9, 2003. Shortly after the incident, she prepared a letter to the College of Physicians & Surgeons outlining what occurred.

Dr. Ali, through his testimony, attempted to establish C.S. was mad at him because he did not prescribe Tylenol 3's to her. Through this evidence, Dr. Ali attempted to provide a reason for this Committee to accept the proposition that because of her anger over this incident, C.S. fabricated a majority of the August 9 incident. This Committee rejects the proposition C.S. made up her testimony for any reason and certainly for the reason C.S. was mad at Dr. Ali for not prescribing to her Tylenol 3's. Dr. Ali made no notation on C.S.'s medical chart that she requested Tylenol 3's and based on C.S.'s recent medical drug history, which was presented before the Committee, C.S. had not been using Tylenol 3's for any reason.

Given this Committee's factual determination, it must now decide if the comments made by Dr. Ali to C.S. were in breach of the standard of conduct expected of a physician.

This Committee finds the comments made by Dr. Ali to C.S. in regard to her being overweight because she was lonely in conjunction with his questions about whether C.S. had a boyfriend, followed by his comments about how he spends time making love to a woman and how C.S. should be treated, amounted to improper, unprofessional and discreditable conduct, pursuant to Section 46(o) and (p) of the Act as well as Bylaw 51(2)(2)(q). Dr. Ali himself testified if this Committee accepted C.S.'s testimony he would have acted improperly. The comments which this Committee accepts as having been made by Dr. Ali to C.S. were "sexualized comments" that could objectively be viewed as Dr. Ali attempting to open the door towards a relationship with C.S. and were ill advised. Therefore, this Committee finds Dr. Ali guilty of Charge #2.

Charge #3

Facts – Charge #3

S.O. worked as a technician in Stony Rapids from approximately June 30, 2003 to August 24, 2003. In this period of time, she worked at the same facility as Dr. Ali but was not under his direct supervision.

S.O. testified she worked an 8 a.m. to 4 p.m. shift from June 30 to July 15 and that she was on call for the rest of each day. S.O. was required to provide her whereabouts to the hospital so she could be called back, if necessary. S.O. testified she was usually called back to the hospital on days when she was on call.

S.O. testified that in her dealings with Dr. Ali, he was very talkative and enjoyed discussing things. S.O. testified Dr. Ali invited her to go fishing, go see the bears, or have him show her around town. S.O. testified Dr. Ali invited her to attend a function with him, “probably on a daily basis”. S.O. testified she replied to Dr. Ali “No thank you”, “I am tired” and “I am on call”. S.O. testified she tried to be polite with Dr. Ali and she would act as if Dr. Ali was just joking and she never agreed to go anywhere with him.

S.O. testified Dr. Ali also asked her to come to his house for dinner and a movie and that they would be alone and they could “make love all night long”. S.O. testified she asked him to stop, leave her alone and advised him that he was freaking her out. S.O. testified he then left her alone for a period of time.

S.O. testified after she had advised Dr. Ali to leave her alone, Dr. Ali asked her whether a mark on her neck was a “hickey”. She advised him it was not a hickey but a birthmark. S.O. testified Dr. Ali then said words to the effect “You would probably rather have hickeys down there”, referring to her genital area. S.O. testified she brushed his hand away, went to the Emergency desk and may have growled at him. S.O. could not remember specific dates in regard to incidents, save and except for the hickey incident, which she said, based on her letter dated July 27, 2003, occurred on July 24. The letter dated July 27, 2003, provides:

“July 27, 2003

When I first came to work at the Hospital I was very happy with how nice everyone is. But I found Dr. Ali to be intimidating. He would corner me in my lab and hinder my work. By my 2nd week he began making inappropriate comments. He came up behind me at my xray computer and put his arms around my waist. When I moved away he still held me and whispered in my ear that I was grouchy and said

“What you need is some good loving”, then he walked away. He continued asking me to go places with him, which I consistently declined. Next, a few days later, after being called in in the night, he asked me to come to his house for supper. Again, I declined, to which he said, “Come on, we’ll be all alone there and I can make love to you all night long.” I responded “You need to stop this, you are starting to freak me out.” I left for 6 days and when I returned he seemed to be leaving me alone so I let things be. On Friday as I was going to emergency for a medivac patient he caught up to me in the hall. He touched my neck and inquired about a mark there. I told him it is my birthmark. He said “are you sure it’s not a hickey”. I said, “Yes, I’m sure, I’ve had it since I was born.” He then said, “Oh you probably would rather have hickeys down there.” and gestured to my privates. I ignored him and got away. He makes me very uncomfortable and I don’t want to work like this. I am nervous to come in at night when I am called in and I know he is here.”

On approximately July 27, the nursing supervisor, Dianne Moberly, observed S.O. in an agitated state. When S.O. was questioned by Ms. Moberly as to what was the matter, S.O. broke down crying and advised Ms. Moberly what had been occurring. Ms. Moberly asked S.O. to write down what had occurred, thus the July 27, 2003 letter. S.O. testified she was informed by Ms. Moberly that she (Ms. Moberly) had to report the incident to her supervisor and as a result of this, S.O. was not to be left alone while she was at work. S.O. testified she flip-flopped as to whether or not she should testify in this case and decided she should because she was “worried for the patients” and because she knew one of the other girls, who would be attending as a lab technician at Stony Rapids, was a shy person.

S.O. also testified she had been informing Sherrye Brayshaw, an employee of the Health District about what had been occurring between herself and Dr. Ali.

During cross-examination, counsel for Dr. Ali questioned S.O. in regard to being under the influence of alcohol while on call. S.O. testified she drank on two occasions while she was on call. One of these incidents led to a letter of reprimand from her supervisor, Ms. Moberly, dated August 5, 2003, which provided:

“August 5/03

Dear S.O.

It has been brought to my attention that on Aug 2/03, while you were “on Call” you were seen at a wedding dance in Stony Rapids under the influence of alcohol. According to some members in the community who observed you, stated that you would be in no condition to respond responsibly if you were needed in an emergency.

This behavior cannot and will not be tolerated while you are a employee with the Athabasca Health Authority. Accordingly, I want you to be in no doubt, that should this type of behavior ever happen again you will be subject to immediate dismissal.

I sincerely hope this will not be necessary.

Yours truly,
Dianne Moberly, D.O.C.
Stony Rapids Hospital.

cc Georgina McDonald
C.E.O. Athabasca Health Authority.”

S.O. testified that on a different occasion, possibly July 25, 2003, she attended at a party and observed Dr. Ali. At the party, they chatted about what each other was doing at the party. She testified it was not an unfriendly meeting and that she had two beers at this party. She testified she was not intoxicated.

S.O. specifically testified that in regard to the “hickey incident”, it occurred after she had advised Dr. Ali to “leave her alone”.

Sherrye Brayshaw testified before the Committee. She was employed and located at Stony Rapids for the periods July 8 – 11, 2003 and August 17 – 22, 2003. She was certain about those dates because she kept a diary. She testified S.O. had some discussions with her in regard to her dealings with Dr. Ali and that these discussions occurred during the period July 8 – 11, 2003. She testified during cross-examination S.O. discussed the “hickey” incident with her in July.

Diane Moberly testified S.O.’s July 27 letter wasn’t written on that day and she didn’t know when she received the July 27 letter.

Dr. Ali testified his wife and children attended at Stony Rapids during the last week of June and the first week of July, 2003. He introduced his family to many staff and individuals at Stony Rapids. He testified his stay at Stony Rapids was a difficult one, for a number of reasons which this Committee does not have to get into.

Dr. Ali testified while at Stony Rapids, he lived beside the CEO of the hospital, who lived in the other half of the duplex from him.

Dr. Ali testified S.O. was the lab tech and he would say good morning to her. He also testified he would often talk about bears, fishing and other activities at work and that an individual in the community of Stony Rapids would take him fishing as he had no fishing equipment or ability to find locations to go fishing.

Dr. Ali testified he did not invite S.O. to go fishing with him or ask her to go watch the bears at the local dump. He testified he never invited S.O. to come to his house and watch television with him. He testified he often had to cover for S.O. as she was not available and everyone knew why she was not available. Dr. Ali specifically testified he does not drink and that he observed S.O. at a party on July 25, 2003. He testified she had a beer in her hand and they had a minor discussion along the lines of whether they were each having fun at the party. He testified he didn't ask S.O. to make love to him all night long and he didn't ask her to come to his home for a meal. He denied the "hickey" incident occurred.

Charge #3 - Analysis

Both counsel agreed that while there is no definition of "sexual harassment" contained in the Bylaws, this Committee should accept the definition of sexual harassment as contained in the Supreme Court of Canada decision *Janzen v. Platy Enterprises Ltd.* [1989] 4 W.W.R. 39. In *Janzen*, supra, the Court defines sexual harassment as:

"Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment."

Counsel for the College provided that neither the law nor bylaw 51(2)(r) intends to prohibit normal social contact between men and women, and that in order for conduct to cross the line into sexual harassment, the conduct must be unwelcome, unsolicited and persistent.


Counsel for Dr. Ali argued even if this Committee accepted the testimony of S.O. over Dr. Ali's, Ms. Brayshaw's testimony must lead this Committee to conclude that after Dr. Ali was advised by S.O. to leave her alone, he did. Dr. Ali's conduct was not persistent. Once Dr. Ali was informed by S.O. his advances were unwelcome, they ceased.

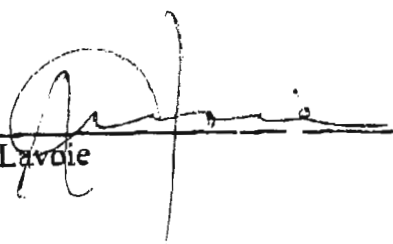
S.O. testified when Dr. Ali would ask her to go on activities with him, she would be friendly but decline the invitation. She testified once she made it clear to Dr. Ali she was not interested in any type of relationship with him, Dr. Ali left her alone for a period of time. S.O. testified after she asked Dr. Ali to leave her alone, the "hickey" incident occurred. However, Ms. Brayshaw's testimony was that the hickey incident occurred in the time period prior to when Dr. Ali was advised by S.O. she had no interest in any type of relationship with him.

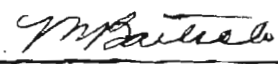
Even if this Committee were to accept the evidence of S.O. over that of Dr. Ali, given the evidence of Ms. Brayshaw, the Committee is unable to find once S.O. advised Dr. Ali she had no interest in him, he continued with a pattern of conduct that could amount to sexual harassment.

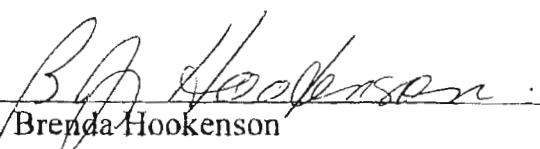
This Committee was sympathetic to the situation in which S.O. found herself. Given her evidence, Dr. Ali was attempting to initiate a relationship. However, once she advised Dr. Ali she was not interested, there was no cogent evidence presented to confirm Dr. Ali continued with any persistent, unwelcome conduct. As such, this Committee finds Dr. Ali not guilty of Charge #3.

DATED this 22nd day of November, 2004



Walter Matkowski, Deputy Chair

Dr. Lionel Lavioie

Dr. Margaret Bartsch

Dr. Brenda Hookenson