Dr. Adarine Mary ANDERSON

Council Decision

Date Charge(s) Laid:	June 24, 2016
Outcome Date:	November 18, 2016
Hearing:	Completed
Disposition:	Fine, Costs, Diversity Training
Reasons for Decision:	March 25, 2017

The Council of the College of Physicians and Surgeons imposes the following penalty on Dr. Adarine Mary Anderson pursuant to **The Medical Profession Act, 1981**:

1) *Pursuant to section 54(1)(e) of **The Medical Profession Act, 1981**, Council imposes a reprimand upon Dr. Anderson.*
2) *Council imposes a fine of $2500. Such payment shall be made in full by December 31, 2016.*
3) *Pursuant to section 54(1)(g) of **The Medical Profession Act, 1981**, Council requires that Dr. Anderson successfully complete, to the satisfaction of the Registrar, an educational program related to Diversity Training on Sexual Orientation and Gender Identity Issues that is approved by the Registrar. Such program shall be completed not later than June 30, 2017.*
4) *Council reserves to itself the ability to review a decision by the Registrar made pursuant to paragraph 2) at the request of Dr. Anderson and to amend or rescind any such decision.*
5) *Pursuant to section 54(1)(g) of **The Medical Profession Act, 1981**, the Council directs that Dr. Anderson will be suspended from the privileges of a duly qualified medical practitioner if she fails to successfully complete the educational program referenced in paragraph 2) on or before June 30, 2017. Dr. Anderson will remain suspended until she successfully completes that educational program.*
6) *Pursuant to section 54(1)(i) of **The Medical Profession Act, 1981**, the Council directs Dr. Anderson to pay the costs of and incidental to the investigation and hearing in the amount of $16,885.69 plus the amount to be paid to Dr. Carol Norman, a member of the discipline hearing committee, plus the costs to be paid by the College of Physicians and*

Surgeons to Ms. Alma Wiebe in relation to the penalty hearing before the Council. Such payment shall be made in full by December 31, 2016.

7) *Pursuant to section 54(2) of **The Medical Profession Act, 1981**, if Dr. Anderson should fail to pay the costs as required by paragraph 5, Dr. Anderson's licence shall be suspended until the costs are paid in full.*

8) *Council reserves the right to amend the terms of this order by extending the time for payment of the costs, by arranging for the payment of costs over time or by installments, or by reducing or forgiving the payment of the costs, or by granting an extension of time to complete the educational program required by paragraph (2). In the event of an amendment to the requirement to pay costs, the Council may impose such additional conditions pertaining to payment and suspension of Dr. Anderson's license for the non-payment as may be permitted by The Medical Profession Act, 1981.*

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

DR. ADARINE MARY ANDERSON, OF THE CITY OF SASKATOON, IN THE PROVINCE OF SASKATCHEWAN

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

Date of Hearing: October 14, 2016

Date of Decision: October 30, 2016

Before: Daniel Shapiro, Q.C., C. Arb.
Dr. Stewart McMillan
Dr. Carol Norman

Counsel: Bryan Salte, Q.C. and Chris Mason
(for the College of Physicians and Surgeons)

No-one on behalf of Dr. Anderson

DECISION

A. SUMMARY

[1] A male identified trans patient complained that during an office visit Dr. Anderson had acted unprofessionally, including making disparaging and disrespectful remarks about the patient's process of transitioning. The issues before the hearing committee were: proof of service of the notice of hearing on Dr. Anderson; whether or not to proceed with the hearing in light of Dr. Anderson's non-attendance and the reasons provided for such non-attendance; and if the hearing were to proceed, whether the College of Physicians and Surgeons of Saskatchewan ("the College") has met the standard of proof required to establish the charge under the *Medical Profession Act, 1981* ("the Act").

[2] The committee has determined that: (a) the notice of hearing was duly served on Dr. Anderson; (b) the hearing should proceed; (c) the College has met the standard of proof required to establish the charge under the Act.

B. RELEVANT STATUTORY PROVISIONS AND BYLAWS

[3] The sections of the Act that are directly relevant to the substance of the charge provide:

> **Charges**
> 46. ***Without restricting the generality of "unbecoming, improper, unprofessional or discreditable conduct", a person whose name is entered on a register is guilty of unbecoming, improper, unprofessional or discreditable conduct if he or she:***
> …

(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.***

[4] Section 6(2)(m) of the Act authorizes Council to enact bylaws that define professional misconduct. Pursuant to that section of the Act, Council enacted a Code of Ethics, Unprofessional Conduct, Discipline, and Competency Assessments, including the following:

8.1 Bylaws Defining Unbecoming, Improper, Unprofessional or Discreditable Conduct

(a) In this section:

(i) "standard of practice of the profession" means the usually and generally accepted standards of practice expected in the branches of medicine in which the physician is practicing.

…

(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 Section 46(o):***

…

(ix) Failing to maintain the standard of practice of the profession;

…

[5] Section 7.1 of the Bylaws provides, in part:

Part 4 – CODE OF ETHICS, UNPROFESSIONAL CONDUCT, DISCIPLINE, AND COMPETENCY ASSESSMENTS

7.1 The Code of Ethics

…

(b) No person who is registered under the Act shall contravene or fail to comply with the Code of Ethics

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

…

CODE OF ETHICS

This Code has been prepared by the Canadian Medical Association as an ethical guide for Canadian physicians… It is based on the fundamental principles and values of medical ethics, especially compassion, beneficence, non-maleficence, respect for persons, justice and accountability…

Fundamental Responsibilities

1. ***Consider first the well-being of the patient***.
2. ***Treat all patients with respect***; do not exploit them for personal advantage.

3. ***Provide for appropriate care for your patient, including physical comfort and spiritual and psychosocial support***, even when cure is no longer possible.

…

9. ***Refuse to participate in or support practices that violate basic human rights***.

…

Responsibilities to the Patient

…

Initiating or Dissolving the Patient-Physician Relationship

17. *In providing medical service, do not discriminate against any patient on such grounds as* age, *gender*, marital status, medical condition, national or ethnic origin, physical or mental disability, political affiliation, race, religion, ***sexual orientation*** or socioeconomic status. This does not abrogate the physician's right to refuse to accept a patient for legitimate reasons.

…

[Emphasis added throughout]

[6] It is left to the medical profession to determine what constitutes unprofessional conduct[1] and in making its determination a committee is entitled to use its medical knowledge and expertise.[2]

C. CHARGE

[7] The Council for the College has directed that the Discipline Hearing Committee hear and determine the following charge laid against Dr. Adarine Mary Anderson:

> You Dr. Adarine Mary Anderson 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 7.1 and paragraph 2. of the Code of Ethics, and/or bylaw 7.1 and paragraph 9. of the Code of Ethics, and/or bylaw 7.1 and paragraph 17. of the Code of Ethics, and/or bylaw 8.1(b)(ix) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.
>
> The evidence that will be led in support of this charge will include some or all of the following:
>
> a) A person hereinafter referred to in this charge as "Patient Number 1" was your patient;
>
> b) On or about January 5, 2016 you met with Patient Number 1;
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> c) During the course of your interaction with Patient Number 1 the patient advised you that the patient was in the process of transitioning from female to male;

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[1] *Green v. The College of Physicians and Surgeons (Sask.)* 1986 CanLII 3238 (SK CA) 51 Sask. R. 241 at 246
[2] *Huerto v. College of Physicians and Surgeons (Sask.),* 2004 SKQB 360 (CanLII) [2004] S.J. No. 550 (Smith J.)

d) During the course of your interaction with Patient Number 1, you made statements to Patient Number 1 related to the patient's transition from female to male which were not related to the reasons for which the patient requested your medical services;

e) During the course of your interaction with patient number 1 you made statements to Patient Number 1 which were insensitive and unrelated to the reasons for which the patient requested your medical services;

f) During your interaction with Patient Number 1, you made the following comments, or comments to a similar effect:

I. You said to Patient Number 1 in relation to transgender people that "it would be the end of the world because there would (sic) no more females or males to reproduce";

II. You said to patient Number 1 that "being transgender is an abomination";

III. You said to patient Number 1 that "being transgender is a perversion";

IV. You said to Patient Number 1 that "little boys don't feel special anymore"

V. You said to Patient Number 1 that "'I don't understand how you can be male if you have breasts.

D. SERVICE OF NOTICE OF HEARING

[8] Dr. Anderson did not attend the hearing, either in person or through legal counsel. Thus, it is necessary to have particular regard to the issue of whether or not the College has proved that she was duly served with the Notice of Hearing.

[9] The Act provides:

Service of Notice
57 (1) A notice or document other than a subpoena required to be served under this Act or under any rule, order or bylaw made pursuant to this Act may be served personally or by registered mail to the last known address of the person being served.

(2) A notice or other document served by registered mail is deemed to have been received on the fifth day following the date of its mailing unless the person to whom it was mailed established that, through no fault of his own, he did not receive the notice or other document or that he received it at a later date.

(3) In the case of a hearing by… the discipline hearing committee… a notice or document shall be served:
(a) in the case of personal service, not less than seven days; or
(b) in the case of service by registered mail, not less than 30 days;
prior to the date of the hearing…

[10] The Affidavit of Service of Alyssa Van Der Woude, Administrative Assistant with the College,[3] states that on August 25, 2016, the Notice of Hearing, setting out the charge and the location, date and time of the hearing, was sent by registered mail to Dr. Anderson's postal

[3] Exhibit C-1

address as provided by Dr. Anderson to the College. Although the envelope was returned to sender with the stamp "Moved / Unknown", the affidavit indicates that in view of section 57 (2) of the *Act*, the notice was deemed to have been received on the fifth day following the date of its mailing. Thus, Dr. Anderson was deemed to have been effectively served on August 30, 2016.

[11] The affidavit states that on August 26, 2016, Ms. Van Der Woude also sent the Notice of Hearing by email to Dr. Anderson's email address that she used to communicate with the College. Attached to the affidavit is Dr. Anderson's email reply of August 27, 2016, which states:

> Dear Alyssa,
>
> I have received the Notice of the hearing…

[12] Counsel for the College relies on *Sandhu v. MEG Place LP Investment Corp.* 2012 ABCA 266 in support of the proposition that the College has established that Dr. Anderson was duly served with the Notice of Hearing. The following passages are most relevant:

> 19. Service is a quintessentially practical consideration. The only point of service is that the defendant must get notice of the claim against it. Service is not some sort of magical or formalistic ritual that has to be followed. While civil procedure recognizes certain forms of service, unconventional forms of service that actually bring the legal process to the attention of the person being served are still effective. For example, assume that personal service is required, but when the process server arrives the defendant is not there. His wife agrees, however, to provide the documents to her husband when he returns. The next day the husband sends an email, the contents of which make it clear that his wife did follow through, and that he is aware that he has been sued and served. This is **effective service**, even though it is unconventional.
> …
>
> 23. To achieve service, the documents must be conveyed in a context that makes it clear rights are being engaged: *Zahmol Properties*[4] at para. 16. That is an objective test; a party cannot argue that it subjectively did not realize what the document were…

[13] In the present case, the Notice of Hearing that Dr. Anderson acknowledges receiving, in addition to reciting the above charge in full, states:

> **TAKE NOTICE** that a hearing will be held before the Discipline Hearing Committee of the College of Physicians and Surgeons of Saskatchewan beginning on Friday October 14, 2016 at 9:00 a.m. at the Offices of the College of Physicians and Surgeons of Saskatchewan located at…
>
> **AND FURTHER TAKE NOTICE** that at this hearing the Discipline Hearing Committee will hear the charge set out below.
>
> **AND FURTHER TAKE NOTICE** that you may be represented by counsel at the above hearing.
>
> **AND FURTHER TAKE NOTICE** that should you fail to appear for the above hearing, such order as may be deemed appropriate may be made in your absence.

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[4] *Zahmol Properties Ltd. v. Calgary (City)*, 2012 ABCA 89 at paras. 14-6.

[14] The position of the College to the effect that the "deeming provision" in the language set out in section 57(2) of the Act applies in circumstances where the Notice of Hearing was returned by Canada Post marked "Moved / Unknown, Return to Sender," while otherwise not compelling, has some merit in light of Dr. Anderson's failure to provide the College with her current mailing address.

[15] Regardless, however, both the Affidavit of Service and further affidavits discussed below include correspondence making it abundantly clear that, while opposing the legitimacy of the process, Dr. Anderson was clearly notified of the hearing and its potentially serious consequences by email with more than the required 30-day notice. The language of the Notice of Hearing that Dr. Anderson acknowledges receiving is crystal clear that rights are being engaged. Further, there is extensive evidence in the affidavits filed, of emails flowing between the College and Dr. Anderson, readily establishing that the College went to great lengths to ensure that Dr. Anderson was aware that legal rights were being engaged, with the College also including lengthy passages from the Act and Bylaws. An objective person would clearly understand that rights were being engaged.

[16] Under the circumstances, considering the above provisions of the Act, and applying the rationale set out in the *Sandhu* case, we have no hesitation concluding that the College has proven effective service of the Notice of Hearing upon Dr. Anderson.

E. SHOULD THE HEARING PROCEED IN DR. ANDERSON'S ABSENCE

[17] In an August 27, 2016 email from Dr. Anderson to Ms. Van Der Woude,[5] Dr. Anderson states:

> I will not be able to attend the hearing as I will not be in Saskatoon on October 14th…
>
> I am still occupied with pressing issues and request the matter rest until I am back in Canada.

[18] Reading these aspects of her reply in isolation from the rest of her correspondence might well cause one to conclude that Dr. Anderson was requesting that the hearing be postponed in order that she could attend a hearing upon her return to Canada. Such a position, if articulated as such, along with supporting material, may well have been persuasive. However, the balance of the email makes it clear that she had no intention of attending a hearing regardless of when it was scheduled or whether she was in Canada at the time.

> I am not willing to attend any hearing of what I consider to be A STAGED CHARGE.
>
> I request a meeting with the Physician Registrars to begin with the letter of complaint received on February 2 written by a person not present at the Consultation with (Patient 1) whose identity is kept secret and whose relation to the patient is unknown.
>
> The Preliminary Inquiry Committee meeting I consider a farce, that the Police Officer present, who gave a (sic) constructive input, did not sign the Report nor did the Psychiatrist sign and my response, sent by email, to Mr. Salte,[6] I was told would be shown to the Council.

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[5] Exhibit "D" to the Affidavit of Service, Exhibit C-1
[6] Bryan Salte, Q.C. is the Associate Registrar of the College

> I expected the Preliminary Committee meeting to be followed by a meeting with the Executive Committee who I assumed would be the Physician Registrars.
>
> I doubt if the Council saw my 2-page email in response to Dr. Mohammad's (sic) recommendation that I be charged with Unprofessional Conduct.
>
> I request you pass on my reply to the Physician Registrar, Dr. Howard Tripp, who has sent the content of the Notice of hearing, who I would be glad to discuss the issue with upon my return to Saskatoon….

[19] Mr. Salte responded to Dr. Anderson on September 5, 2016, making it clear that the charge was laid and the hearing would occur following the process established by legislation, and the fact that Dr. Anderson would prefer the matter to be addressed in a different manner did not change the fact that the hearing would proceed. Mr. Salte further advised that the process does not involve the Registrar or the Deputy Registrar, that it is a hearing before the discipline hearing committee, with sworn evidence being presented to the committee.

> The committee will determine whether you are guilty of unprofessional conduct. If the committee concludes that you are guilty of unprofessional conduct, there will be a penalty hearing before the Council.

[20] Further affidavits of Ms. Van Der Woude were tendered, dated October 5, 2016[7] and October 16, 2016.[8] These affidavits contain extracts from correspondence between Mr. Salte and Dr. Anderson between February 2, 2016 and October 13, 2016. The communications from Mr. Salte strongly encouraged Dr. Anderson to obtain legal advice through the Canadian Medical Protective Association ("CMPA") and collegial support through the Saskatchewan Medical Association. Despite this, Dr. Anderson replied, "I have elected not to inform the CMPA."

[21] Dr. Anderson attended for an interview with a Preliminary Inquiry Committee ("PIC") consisting of Dr. Kukha-Mohamad[9] and Ms. Carolyn Hlady[10] on April 22, 2016.

[22] On May 3, 2016, Mr. Salte advised Dr. Anderson that the PIC had recommended that Dr. Anderson be charged with professional misconduct and that Council would consider the report and decide whether she should be charged at its meeting of June 25, 2016. Dr. Anderson sent various emails to Mr. Salte, including one of June 10, 2016, in which she disputed the findings of the PIC and stated:

> There is no Proof only the patients (sic) word and subscribers (sic) written Complaint, who was not present, against my Rejection of the Complaint and statement that the Complaint is not true.
>
> > A charge I understand leads on to a Court Case and I have non Litiginous (sic) Religeous (sic) views and cannot be involved with a Court Case.

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[7] Exhibit C-2
[8] Exhibit C-3
[9] Psychiatrist
[10] Retired police Officer

[23] Mr. Salte advised Dr. Anderson on June 25, 2016 of the charge that had been laid by Council. Later emails from Mr. Salte outlined the process and again strongly urged that Dr. Anderson retain legal counsel. On July 14, 2016, Dr. Anderson emailed Mr. Salte as to a possible hearing date:

> This has come to a head at an awkward time and I am unable to give this serious matter all the attention it needs as I am occupied with other pressing issues and not certain when I will arrive in Saskatoon.
>
> My travel plans are therefor (sic) uncertain and I cannot be tied to any date for a hearing until these plans are finalized. I will advise you when these travel plans are finalized.

[24] There was no further correspondence from Dr. Anderson until her email to Ms. Van Der Woude of August 27, 2016, after receiving the Notice of Hearing. After that, Mr. Salte reminded Dr. Anderson that the matter would be addressed in the manner outlined by the College and not by way of the process insisted on by Dr. Anderson. On September 5, 2016, Dr. Anderson replied, referring again to a "staged" charge and asking to meet with the Physician Registrars. There is further correspondence to the same effect, including a September 8, 2016 email ending with, "I am still occupied with pressing issues and request the matter rest until I am back in Canada."

[25] Mr. Salte provided Dr. Anderson with the Affidavit of Ms. Van Der Woude dated October 5, 2016, explaining that the Chair of the Discipline Hearing Committee questioned why Dr. Anderson would not attend and would not be represented at the hearing, inviting her to provide a further explanation for the committee of her decision not to attend the hearing. Dr. Anderson's response, her most recent email, dated October 13, 2016,[11] indicated that she would return to Saskatoon on October 24, 2016 and again requested a meeting with the Executive Committee and two Physician Registrars. She stated:

> …I declined to attend any hearing because I consider the Preliminary Committee was a farce and the recommendation of a Charge of Unprofessional Conduct was staged.
>
> However with regret I attended the Substitute Preliminary Committee meeting, that has been recorded, and the record is not what the Report of the Preliminary Committee states. That Dr. Anderson agreed with most of the contents of the letter of complaint, when I do not agree at all with the letter of Complaint.
>
> This report is not signed and I doubt if Ms. Hlady the Retired Police Officer, who was helpful, contributed to the report, that recommended I be charged with Unprofessional Conduct.[12]
>
> I decline to discuss with any other than the Executive Committee, the letter of complaint… I need the opportunity to share my concerns for the Patient… and to recount the consultation on January 5th with Physicians.
>
> It is incredible how the cordial meeting with (Patient 1) has been described by the subscriber, not present and not identified. Her relation to the patient form, not completed.
>
> This should answer the question why I will not attend a Hearing.

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[11] Exhibit C-3

[12] Ms. Van Der Woude, who also testified at the hearing, later confirmed that both members of the PIC indicated their support for the report of the PIC in writing, through electronic communications, not by signature.

> I believe I acted out of concern, for the patient that her intention was not realistic, and she needed to be aware that gender change is more than a name change.

[26] Having carefully considered the totality of the correspondence between the College and Dr. Anderson that was entered in evidence, we are of the view that although Dr. Anderson did ask that the hearing be put off, she had nevertheless made it clear that she would not attend before the Discipline Hearing Committee regardless of when the hearing would be held. She has persisted in advocating for a resolution of the charge in a manner that is not contemplated by the Act and that she is not legally entitled to.

[27] All physicians who belong to the CMPA[13], membership in which is required, are entitled to legal representation in such matters at no cost, as part of their CMPA coverage. Unfortunately, Dr. Anderson has chosen not to avail herself of this representation. The Committee would by far have preferred to have had the benefit of her evidence and submissions. However, she cannot be compelled to testify and has chosen instead, for personal, religious and/or other unknown reasons, to attack the legitimacy of the processes that led to the hearing before the Discipline Hearing Committee.

[28] Under the circumstances, given Dr. Anderson's repeated protests and communications that she will not attend the hearing regardless of when the hearing would be held, we agreed with the College that there was no point in postponing the hearing, at which point we would have undoubtedly been in the same position.

[29] The Committee ruled that the hearing should proceed despite Dr. Anderson's absence, an eventuality that, while regrettable, is envisaged by section 58 of the Act.

E. BURDEN OR PROOF

[30] It is beyond dispute that the burden of proof in disciplinary proceedings such as these lies squarely upon the College.

G. STANDARD OF PROOF

[31] The standard of proof required to establish a charge under the Act is not the criminal standard of proof beyond a reasonable doubt, but a lesser standard. There is only one civil standard of proof, and that is the balance of probabilities.

[32] This standard of proof was articulated by the Supreme Court of Canada in *F.H. v. McDougall*,[14] which we adopt for the purposes of these proceedings,[15]in particular:

> [45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the

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[13] Or similar organization

[14] 2008 SCC 53, in particular at paragraphs 40 and 43-49

[15] The rationale in *McDougall* was applied to a professional regulatory/disciplinary hearing in the following cases: *Osif v. College of Physicians and Surgeons of Nova Scotia*, [2009] N.S.J. No. 111 (Q.B); *Rassouli-Rashti v. College of Physicians and Surgeons of Ontario*, [2009] O.J. No. 4762 (Div. Ct); *Newton v. Criminal Trial Lawyers Association*, 2008 ABCA 404; *Moll v. College of Alberta Psychologists*, [2011] A.J. No. 369 (C.A.); and *Walsh v. Council for Licensed Practical Nurses* [2010] N.J. No. 61 (N & L C.A.).

> evidence depending upon the seriousness of the case. ***There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge***.
>
> [46] ***Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test***. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision***. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.***
>
> [Emphasis added]

H. *VIVA VOCE* TESTIMONY

[33] Patient 1 testified under oath at the hearing. Patient 1 was raised as a girl with a female given name. Patient 1 self-identifies as a male, uses a male given name and male pronouns, and is in the process of transitioning. Although he identifies as a male, his legal documents do not yet reflect this. In addition to the significant medical challenges associated with transitioning, such as testosterone therapy, and now facing difficult gender confirmation surgical procedures (including double mastectomy and hysterectomy), he has faced religious objections from family members. He also described challenges such as those involved in the use of public washroom facilities, given that he still has a female body despite having a deeper voice and facial hair.

[34] Patient 1 attended Dr. Anderson's clinic, located in a Saskatoon Wal-Mart store, on January 5, 2016, for bronchitis, which he had experienced in the past. He registered under his female given name and was 18 years of age. After saying "hello" to Dr. Anderson, Dr. Anderson replied, *your voice is quite deep for a female*. Patient 1 explained that he was transitioning to male. Dr. Anderson commented to the effect that *little boys don't feel special any more*. She commented to the effect that transitioning from one gender to another *would mean the end of the human species*. She further stated that this was *an abomination of God.* She commented to the effect that *she could not understand how he could be a male because of his female chest*. Finally, Dr. Anderson commented on his Patient 1's weight and gave him diet tips.

[35] In response to questioning from the committee, Patient 1 testified that he could not remember Dr. Anderson stating words to the effect that "being transgender is a perversion", as set out in the charge.

[36] Patient 1 was shocked and deeply distressed by this interaction that in total had lasted about 15 minutes. He had gone to see Dr. Anderson for bronchitis and had neither sought nor expected to receive advice from her with regard to transitioning. He broke down in the Wal-Mart parking lot to his friend, who he named, a social worker who was the Youth and Education Coordinator with "Out Saskatoon," which he described as a "queer counseling centre." The social worker asked him if he wanted to complain to the College, which having considered, he did the next day. The social worker did not testify at the hearing.

[37] Patient 1 had seen Dr. Anderson only once before this, about a year previous. There were no issues arising from the previous attendance. Patient 1 noted that at that time, it was not obvious from his appearance that he was transitioning.

[38] At the hearing, the Committee asked the College to provide Dr. Anderson's clinical notes regarding this attendance. This was accomplished on the morning of the hearing by way of an

affidavit from an employee of Dr. Anderson's clinic.[16] The notes indicate that the patient attended with symptoms of cough and sputum with chest tightness. They further state, "This 18 year old is transitioning to male gender. Was raised as a female… Assessment: "Bronchitis with FH (family history) of asthma. Transitional to male gender…" Dr. Anderson prescribed an antibiotic and puffer and noted that she had encouraged the patient to quit smoking. "Check up Friday".

[39] Alyssa Van Der Woude also testified, to the following effect: (a) In late February 2016, the Executive Committee concluded that it had reasonable grounds to believe that Dr. Anderson may be guilty of unbecoming, improper, unprofessional or discreditable conduct in relation to the complaint by Patient 1;[17] (b) in April 2016, the Executive Committee directed that the preliminary inquiry committee to investigate these matters would consist of Dr. Kukha-Mohamad and Ms. Hlady; (c) the Bylaws, including the Code of Ethics, were in effect as of January 5, 2016 and have remained in effect at all times since.

I. ANALYSIS

[40] In considering whether or not the College has met its burden[18] to provide sufficiently clear, convincing, and cogent evidence to satisfy the balance of probabilities test, we must review the relevant evidence with care to determine whether it is more likely than not that the alleged event occurred.

[41] As to the circumstances surrounding Patient 1's attendance at Dr. Anderson's office on January 5, 2016, we are left primarily only with Patient 1's own testimony.

[42] As a starting point in our assessment of the credibility and reliability of the witnesses' evidence, we have considered the comments of O'Halloran, J, in the oft-quoted case of *Faryna v. Chorney*:[19]

> If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, and cf. *Raymond v. Bosanquet* (1919), 50 D.L.R. 560 at p. 556, 59 S.C.R. 452 at p. 460, 17 O.W.N. 295. A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial Judge, and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.
>
> The credibility of interested witnesses, 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. ... the real test of the truth of the story of a witness in such a case must be its harmony with the

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[16] Exhibit C-5
[17] Section 43.1 of the Act.
[18] As identified in *McDougall, supra*
[19] [1952] 2 D.L.R. 354 (B.C.C.A.), at pp. 356-7

> preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say, "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.
>
> The trial Judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion.

[43] In proceedings under the *Act*, as in every civil proceeding, it is necessary to assess both the credibility and the reliability of the witness. By "credible" we mean: was the witness honestly trying to tell the truth? By "reliable" we mean: was the witness able to give accurate testimony? The distinction between those two concepts was discussed by the Ontario Court of Appeal in ***R. v. S. (W.)***:[20]

> We all know from our personal experiences as trial lawyers and judges that honest witnesses, whether they are adults or children, may convince themselves that inaccurate versions of a given event are correct and they can be very persuasive. The issue, however, is not the sincerity of the witness but the reliability of the witness' testimony. Demeanour alone should not suffice to found a conviction where there are significant inconsistencies and conflicting evidence on the record.

[44] Some factors we may look at, to determine whether we can rely on a witness's testimony, include:

- its consistency over time—whether the story changes significantly between tellings;
- its consistency with other known facts; and
- whether the story told by the complainant makes sense in the context of what a reasonable and informed person would recognize as likely, in that place and in those conditions.

[45] There is a helpful discussion of a methodology for assessment of credibility by the British Columbia Human Rights Tribunal in the decision ***Brar and others v. B.C. Veterinary Medical Association and Osborne***[21]. After referring to ***Faryna, supra,*** the tribunal stated:

> [78] More recently, in *Bradshaw v. Stenner*, 2010 BCSC 1398 (CanLII), the Court said:
>
> > Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of

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[20] (1994), 90 C.C.C. (3d) 242 (Ont. C.A.), at p. 250; leave to appeal to S.C.C. refused 93 C.C.C. (3rd)
[21] (No. 22), 2015 BCHRT 151

> interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
>
> It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness' testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.
>
> Most helpful in this case has been the documents created at the time of events, particularly the statements of adjustments. These provide the most accurate reflection of what occurred, rather than memories that have aged with the passage of time, hardened through this litigation, or been reconstructed... The inability to produce relevant documents to support one's case is also a relevant factor that negatively affects credibility... (paras. 186-188)

[79] The Tribunal has applied a number of factors in assessing a witness' credibility including "their motives, their powers of observation, their relationship to the parties, the internal consistency of their evidence, and inconsistencies and contradictions in relation to other witnesses' evidence". (*Hadzic v. Pizza Hut Canada* (1999), 37 C.H.R.R. D/252 (B.C.H.R.T); see also *Agduma-Silongan v. University of British Columbia*, 2003 BCHRT 22, para 154). In addition, the fact that a party failed "to call or produce material evidence" might assist determining credibility. (*Bageya*, para. 156; *McKay v. Toronto Police Services Board*, 2011 HRTO 499 (CanLII) ("*McKay*") at para. 11)

[80] Generally, I found the witnesses to be credible in some areas but not others. For example, some witnesses had a clear recollection of the events while giving their direct evidence, but that recollection became more vague, evasive or self-serving in cross-examination. However, I note that the failure of a witness to be consistent in his or her evidence does not necessarily indicate untruthfulness. Some witnesses became argumentative while giving their evidence or unnecessarily embellished and exaggerated their evidence to support their theory of the case. In some cases, when the documents differed from the witness' recollection or his or her theory of the case, the witness strained their evidence in order to make the written document reflect their view of the events. I will outline these concerns in more detail when I review the evidence before me and make my findings of fact. . . . .

[84] It is unfortunate that the parties were unable to resolve the issues between them without the necessity of having me write this decision. Many of the witnesses, who

> are professionals, will be unhappy with the findings that I make regarding their credibility and their perception of the events. I have attempted to be restrained in my comments and was guided by the Supreme Court of Canada's statement in R. v. R.E.M., 2008 SCC 51 (CanLII):
>
> > While it is useful for a judge to attempt to articulate the reasons for believing a witness and disbelieving another in general or on a particular point, the fact remains that the exercise may not be purely intellectual and may involve factors that are difficult to verbalize. Furthermore, embellishing why a particular witness's evidence is rejected may involve the judge saying unflattering things about the witness; judges may wish to spare the accused who takes the stand to deny the crime, for example, the indignity of not only rejecting his evidence and convicting him, but adding negative comments about his demeanor. In short, assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization. (para. 49; see also *Mariano v. Campbell*, 2010 BCCA 410 (CanLII) para. 39)

[46] We now turn to an analysis of the credibility of Patient 1's testimony. He took his oath seriously and took care to limit his testimony to those matters that he could recall with confidence. He had good recall of the events in question. He spoke openly and was not prone to exaggeration or embellishment. For example, when asked a leading question by the Committee that offered the opportunity to do so, he denied remembering the comment attributed in the charge against Dr. Anderson, to the effect that "transitioning is a perversion." This speaks to his even-handedness. Apart from this, there was consistency over time with regard to the core of the allegations against Dr. Anderson. Patient 1 acted promptly by filing the complaint with the College the day after the incident, at a time when, it is worth nothing, his memory of the interaction was fresh.

[47] The interaction between Patient 1 and Dr. Anderson a year previous was unremarkable. There is absolutely no basis for us to conclude that Patient 1 had any agenda on January 5, 2016, apart from obtaining treatment for bronchitis, or that any part of the interaction or subsequent events was "staged". Nor is there any basis for us to conclude that he was coaxed into filing a complaint by the social worker from "Out Saskatoon" or that the complaint was brought for any improper purpose. Indeed, Patient 1's reactions to the incident are consistent with those of a young, vulnerable person at a delicate point of transition, who had been badly let down by a physician upon whom he ought to have been able to rely for sensitivity, respect and support.

[48] In short, we have no reason to doubt Patient 1's truthfulness and find his testimony to be credible.

[49] We now turn to an analysis of the reliability of Patient 1's testimony. In addition to the substantial consistency in the description of events over time, as noted above, while not by any means definitive, there are some external markers that can be relied on in this case that are to some extent supportive of Patient 1's testimony. First, Dr. Anderson's clinical notes from the attendance in question refer in two separate locations to the fact that Patient 1 was transitioning – this confirms that from Dr. Anderson's perspective, this subject was indeed central to the interaction. Second, and somewhat more decisively, while Dr. Anderson does not confirm the exact words she used, she does acknowledge that, in the context of an appointment to assist with the symptoms of bronchitis, she took

the initiative to delve into an area that went well beyond the scope of the reasons for Patient 1's attendance. Her email of October 13, 2016 stated:

> I believe I acted out of concern, for the patient that her intention was not realistic, and she needed to be aware that to change gender is more than a name change.

[50] In summary, we find Patient 1's testimony to be reliable.

Conclusions of Fact

[51] After careful deliberation, we find it probable that on January 5, 2016, in the context of a medical attendance for reasons related to bronchitis, Dr. Anderson launched into an unsolicited running commentary to Patient 1 regarding transitioning that included words to the following effect:

> 1. In relation to transgender people that "it would be the end of the world because there would be no more females or males to reproduce";
>
> 2. Being transgender is "an abomination of God".
>
> 3. "Little boys don't feel special any more".
>
> 4. "I don't understand how you can be male if you have breasts."

Legal Analysis

[52] The language that we find was used by Dr. Anderson, particularly in the context of a medical attendance for the purposes of assisting with bronchitis, can only be characterized as harshly judgmental, amounting to an indictment of gender confirmation / transitioning. Patient 1 had already experienced rejection of his path by his family and the last thing he needed or deserved was to experience this from a physician upon whom he should have been able to count on to be treated with sensitivity and respect.

[53] At the same time, although the particulars of the evidence that would be led are well set out in the charge, the charging provisions themselves are somewhat convoluted.

[54] In measuring the proven conduct against the specific charge, we first consider the provisions from the Code of Ethics / Bylaws that Dr. Anderson is charged with, appearing under the heading of "Fundamental Responsibilities".

> **2. Treat all patients with respect; do not exploit them for personal advantage.**

[55] There are two branches to this section, proof of either one could lead to a conviction. There is no evidence that would allow us to conclude that Dr. Anderson exploited Patient 1 for personal advantage. This leaves for consideration the matter of whether she violated the obligation to "treat all patients with respect." We are unable to conceive of any characterization of Dr. Anderson's proven conduct that is consistent with "treating the patient with respect." Her commentary was disrespectful of Patient 1's identity and the path he has chosen to be who he is.

We find Dr. Anderson guilty of failing to treat Patient 1 with respect, pursuant to this Bylaw provision.

9. Refuse to participate in or support practices that violate basic human rights.

[56] In the Committee's view, it is or ought to be a fundamental and basic human right for individuals to be able to freely express their gender identity. However, there are many contexts regarding human rights that could potentially have application. For example, it is known that the Code of Ethics enshrined in the College Bylaws was derived from the CMA as an ethical guide that applies nationally. It does not incorporate by reference specific human rights legislation. Indeed, ***The Saskatchewan Human Rights Code***, S.S. 1979l c. S-24.1 as amended, provides:

> Interpretation
>
> 2(a) In this Act:
> …
> (m.01) **"prohibited ground**" means: …
>
> (xv) **gender identity**;
>
> 12(1) No person, directly or indirectly,… shall, on the basis of a prohibited ground:
>
> (a) deny to any person or class of persons the accommodation, services, or facilities to which the public is customarily admitted or that are offered to the public;
>
> (b) discriminate against any person or class of persons with respect to the accommodation, services or facilities to which the public is customarily admitted or that are offered to the public.

[57] The *Human Rights Code* prohibits the denial of or discrimination in the context of access to services, based on a prohibited ground. In this case, however, Patient 1 was not denied the service he attended for: indeed Dr. Anderson appropriately prescribed antibiotics and a puffer for bronchitis. However, the price Patient 1 had to pay to access those services was an unacceptable one - being subjected to an unsolicited and unwelcome attack on his identity by a trusted health professional.

[58] Although Dr. Anderson's statements were inappropriate and disrespectful, the College did not provide any jurisprudence or other assistance to our Committee regarding the interpretation, scope or breadth contemplated by the words "violation of human rights" under section 9 or what external measure applies to the meaning this phrase. Thus, we decline to convict Dr. Anderson of a violation of this section.

Initiating or Dissolving the Patient-Physician Relationship

17. In providing medical service, do not discriminate against any patient on such grounds as age, gender, marital status, medical condition, national or ethnic origin, physical or mental disability, political affiliation, race, religion, sexual

> **orientation or socioeconomic status. This does not abrogate the physician's right to refuse to accept a patient for legitimate reasons.**

[59] The Code of Ethics appears to have lagged behind *The Human Rights Code* - the latter specifically includes "gender identity". However, the use of the words "***such grounds as***…" in the Code of Ethics clearly signals that the grounds of discrimination listed in paragraph 17 are illustrative but not exhaustive. In our view, section 17 is thus sufficiently broad to encompass discrimination based on "gender identity". Further, unlike *The Human Rights Code*, the Code of Ethics is not limited to cases of denial of access to services. Here, Patient 1 received the medical treatment he required regarding bronchitis. Nevertheless, because he was clearly treated differently than others in the provision of medical services based on a personal trait, he was also the victim of "discrimination on such (analogous) grounds as gender and sexual orientation." Dr. Anderson's commentary, which was disrespectful and disparaging of Patient 1, was also discriminatory against him.

[60] The Committee concludes that the College has also provided that Dr. Anderson was guilty of a breach of paragraph 17.

[61] Finally on the issue of the Code of Ethics, arguably, in addition to a violation of paragraphs 2 and 17, it may have been open to us to conclude that there were violations of paragraphs 1 ("**Consider first the well-being of the patient**") and/or 3 ("**Provide for appropriate care for your patient, including physical comfort and spiritual and psychosocial support**…). However, those paragraphs were not included in the charge.

[62] As the College did not make submissions on the issue of whether Dr. Anderson may have contravened Bylaw Section 8.1(b) (ix) ("failing to maintain the standards of the profession"), we have not ruled on that matter.

[63] In conclusion on the issue of whether a breach of the Bylaw/Code of Ethics has been proven, we find Dr. Anderson guilty of conduct that Council has defined by bylaw to be "unbecoming, improper, unprofessional or discreditable conduct", in particular, in Bylaw 7.1 and paragraphs 2 and 17 of the Code of Ethics and thus Section 46 (p) of the Act.

[64] Further, if we are incorrect in our conclusions above, we would have concluded that, in addition to the breach of the specific bylaw provisions noted above and Section 46 (p) of the Act, the College has also met its burden of proving that Dr. Anderson is guilty under the general charging provisions of Section 46 (o) of the Act:

> 46. Without restricting the generality of "unbecoming, improper, unprofessional or discreditable conduct", a person whose name is entered on a register is guilty of unbecoming, improper, unprofessional or discreditable conduct if he or she:
>
> …
>
> (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;

[65] Whatever Dr. Anderson's personal, religious or professional beliefs, her conduct did not follow the core of the Code of Ethics adopted by the College; "the fundamental principles and values of medical ethics, especially compassion, beneficence, non-

maleficence, respect for persons, justice and accountability." She failed in meeting her primary obligations – to consider first the well-being of the patient, to treat the patient with respect, and to provide appropriate care for her patient, including spiritual and psychosocial support.

[66] The first question Dr. Anderson asked, to the effect of why the patient had a deep voice to the female, was medically justified in addressing the patient's presenting issue of bronchitis. However, from that point forward, it appears that Dr. Anderson's judgment became clouded, to the detriment of her patient, by her preoccupation with a personal agenda that failed to put the patient first. Dr. Anderson's words were shocking and hurtful to her patient – the very last things he needed to hear having shown the courage to take the steps he needed to take in order to be true to himself. Such language, coming from a member of a respected and trusted profession, was disrespectful and inappropriate. It is disappointing that, if Dr. Anderson did have a fundamental and genuine religious objection to the patient's transitioning process, she failed to avail herself of the basic option of referring the patient to another physician, rather than berating and humiliating her patient who attended on her for entirely unrelated reasons.

[67] In our respectful view, Dr. Anderson's proven statements to Patient 1 were disrespectful and also amounted to "unbecoming, improper, unprofessional and discreditable conduct" within the meaning of section 46 (o) of the Act.

J. CONCLUSION

[68] We find that the College has met its burden of establishing by clear, cogent and convincing evidence, on a balance of probabilities, that Dr. Anderson is guilty of improper, unprofessional, and discreditable conduct, pursuant to Bylaw 7.1, paragraphs 2 and 17 of the Code of Ethics and Section 46(p) of the Act. We would also have found Dr. Anderson of violating Section 46 (o) of the Act.

[69] On the issue of penalty for Council to adjudicate upon, as a mitigating factor, we note that Dr. Anderson did appropriately diagnose and treat the patient's bronchitis. The Committee invites Council to consider requiring Dr. Anderson to attend a suitable course of sensitivity training and such other penalty as Council considers appropriate.

[70] In closing, the Committee notes that trans issues are becoming more prevalent in society and physicians need to ensure that their skill-set and attitudes in dealing with trans patients remain or become current.

Dated this 30th day of October, 2016.

Daniel Shapiro, Q.C., C. Arb.,
Chair, Discipline Hearing Committee

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Dr. Stewart McMillan

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Dr. Carol Norman

Dr. Stewart McMillan

Dr. Carol Norman

Carol Norman

Dr. Carol Norman

In The Matter Of *The Medical Profession Act, 1981*, R.S.S. 1980-81, C. M-10.1, Penalty Hearing for Dr. Adarine Mary Anderson

Mr. Bryan Salte, Q.C. appearing for the College of Physicians and Surgeons of Saskatchewan.

No one appearing for Dr. Adarine Mary Anderson

On this day November 18, 2016 in Saskatoon, Saskatchewan.

The Charges

Dr. Anderson was found guilty, *in absentia*, of the charge as set out below.

You, Dr. Adarine Mary Anderson 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. 1908-81 c. M-10.1 and/or bylaw 7.1 and paragraph 2 of the Code of Ethics, and/or bylaw 7.1 and paragraph 17 of the Code of Ethics, and/or bylaw 8.1(b)(ix) of the bylaws of the College of Physicians and Surgeons of Saskatchewan.

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

a) A person hereinafter referred to in this charge as "Patient Number 1" was your patient;

b) On or about January 5, 2016 you met with Patient Number 1;

c) During the course of your interaction with Patient Number 1 the patient advised you that the patient was in the process of transitioning from female to male;

d) During the course of your interaction with Patient Number 1, you made statements to Patient Number 1 related to the patient's transition from female to male which were not related to the reasons for which the patient requested your medical services;

e) During the course of your interaction with patient number 1 you made statements to Patient Number 1 which were insensitive and unrelated to the reasons for which the patient requested you medical services;

f) During your interaction with Patient Number 1, you made the following comments, or comments to a similar effect;

I. You said to Patient 1 in relation to transgender people that "it would be the end of the world because there would (sic) no more females or males to reproduce";

II. You said to patient number 1 that "being transgender is an abomination";

II. You said to patient number 1 that "being transgender is a perversion";

IV. You said to patient number 1 that "little boys don't feel special anymore";

V. You said to patient number 1 that "I don't understand how you can be male if you have breasts".

The Position of the Registrar's Office

The Registrar's Office puts forth that Dr. Anderson should be reprimanded. Dr Anderson should be required to complete a program related to training in diversity, sexual orientation and gender issues. Dr. Anderson should pay the costs associated with the investigation. Dr. Anderson should be suspended until all the elements of the penalty are met.

Dr Anderson has worked in Saskatchewan since 1993 in mostly temporary positions when covering a practice for a physician. She is 75 years old. She trained in New Zealand. We are unaware of any previous complaints or discipline.

The College refers to **Camgoz v. College of Physicians and Surgeons** (1993), 114 Sask. R. 161 (Q.B.) at 173-174 and **Pottie v. Nova Scotia Real Estate Commission** [2005] N.S.J. No. 276 (S.C.) in their presentation.

The Position of Dr. Anderson

Dr. Anderson was not present or represented at the Discipline Hearing or the Penalty Hearing. The Council strongly encourages all physicians that face a complaint, discipline, or penalty to obtain proper legal representation.

An e-mail received by the College from Dr. Anderson was available to Council. It is dated November 14, 2016. Dr. Anderson clearly states that she will not be attending the Penalty Hearing. Dr. Anderson does not believe that she is guilty of unprofessional conduct. Dr. Anderson believes the "Preliminary Committee was a farce and the charge staged". Dr. Anderson states that she will not pay any legal expenses for hearings she has not attended.

Principles in Establishing the Penalty

Nature and gravity of the allegation

The patient involved was "shocked and deeply distressed" by the 15 minute interaction with Dr. Anderson. The Council found the comments insensitive and very inappropriate. Gender identity is an important social and medical issue that requires respect and sensitivity by the physician. This was not demonstrated.

Age of the Offending Physician

Dr. Anderson is 75 years old and a very experienced physician.

Aggravating or Mitigating Factors

Dr. Anderson does not acknowledge her misconduct. Dr. Anderson does not acknowledge the legitimacy of the discipline process of the College. Most importantly, Dr. Anderson has not acknowledged the distress caused to Patient Number 1.

Penalty

The Council agrees with the Registrar's Office in regard to the penalty. However, due to the lack of acknowledgement of her behavior and the distress caused to Patient Number 1, Council agreed a fine was in order. The penalty is as follows.

The Council of the College of Physicians and Surgeons imposes the following penalty on Dr. Adarine Mary Anderson pursuant to ***The Medical Profession Act, 1981****:*

1) Pursuant to section 54(1)(e) of ***The Medical Profession Act, 1981****, Council imposes a reprimand upon Dr. Anderson.*

2) Council imposes a fine of $2500. Such payment shall be made in full by December 31, 2016.

3) Pursuant to section 54(1)(g) of ***The Medical Profession Act, 1981****, Council requires that Dr. Anderson successfully complete, to the satisfaction of the Registrar, an educational program related to Diversity Training on Sexual Orientation and Gender Identity Issues that is approved by the Registrar. Such program shall be completed not later than June 30, 2017.*

4) Council reserves to itself the ability to review a decision by the Registrar made pursuant to paragraph 3) at the request of Dr. Anderson and to amend or rescind any such decision.

5) Pursuant to section 54(1)(g) of ***The Medical Profession Act, 1981****, the Council directs that Dr.*

Anderson will be suspended from the privileges of a duly qualified medical practitioner if she fails to successfully complete the educational program referenced in paragraph 3) on or before June 30, 2017. Dr. Anderson will remain suspended until she successfully completes that educational program.

6) Pursuant to section 54(1)(i) of ***The Medical Profession Act, 1981****, the Council directs Dr. Anderson to pay the costs of and incidental to the investigation and hearing in the amount of $16,885.69 plus the amount to be paid to Dr. Carol Norman, a member of the discipline hearing committee, plus the costs to be paid by the College of Physicians and Surgeons to Ms. Alma Wiebe in relation to the penalty hearing before the Council. Such payment shall be made in full by December 31, 2016.*

7) Pursuant to section 54(2) of ***The Medical Profession Act, 1981****, if Dr. Anderson should fail to pay the costs as required by paragraph 6, Dr. Anderson's licence shall be suspended until the costs are paid in full.*

8) Council reserves the right to amend the terms of this order by extending the time for payment of the costs, by arranging for the payment of costs over time or by installments, or by reducing or forgiving the payment of the costs, or by granting an extension of time to complete the educational program required by paragraph (3). In the event of an amendment to the requirement to pay costs, the Council may impose such additional conditions pertaining to payment and suspension of Dr. Anderson's license for the non-payment as may be permitted by ***The Medical Profession Act, 1981****.*

Accepted by Council of the College of Physicians and Surgeons: **25 March, 2017**