IN THE MATTER OF:	The *Medical Act*, S.N.S. 2011, c. 38
and	
IN THE MATTER OF:	The College of Physicians and Surgeons of Nova Scotia ("the College")
and	
IN THE MATTER OF:	A Hearing conducted pursuant to s. 53 of the *Medical Act* concerning Dr. Enyinnaya Ezema

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HEARING COMMITTEE DECISION

Date Heard:	August 1 - 4, 2017
Location:	Halifax, Nova Scotia
Hearing Committee:	Mr. Raymond F. Larkin, Q.C. Dr. Brian Moses Dr. P. Scott Theriault Dr. Ethel Cooper-Rosen Ms. Gwen Haliburton
Counsel:	Hector J. MacIsaac, Ms. Loretta M. Manning, Q.C. and Amy E. MacGregor, Counsel to Dr. Enyinnaya Ezema Ms. Jane O'Neill, Q.C., and Ryan Baxter, Counsel for the College of Physicians and Surgeons of Nova Scotia

PART 1 - INTRODUCTION

1. This is a decision of a hearing committee appointed under the *Medical Act*, S.N.S. 2011, c. 38 to hear charges of professional misconduct and/or conduct unbecoming against Dr. Enyinnaya Ezema.

2. Dr. Enyinnaya Ezema was born in Nigeria and educated in Cameroon and Nigeria. He attended medical school in Nigeria and was qualified as a physician there. In 2002, Dr. Ezema moved to Ireland where he trained as a psychiatrist and practiced as a psychiatrist until 2012. He moved to New Glasgow in December, 2012, where he practiced with the former Pictou County Health Authority. He is currently employed by the Nova Scotia Health Authority as a practicing psychiatrist in Amherst, Nova Scotia.

3. On March 2, 2015, the College received a complaint against Dr. Ezema from a registered nurse within the former Pictou County Health Authority, who shall be referred to in these reasons as "Colleague C", alleging inappropriate conduct by Dr. Ezema on December 16, 2014. This complaint was investigated by an Investigation Committee of the College. In the course of the investigation, the Committee interviewed two other colleagues, who shall be referred to as "Colleague A" and "Colleague B". Neither Colleague A nor B filed complaints with the College. Colleague A alleged inappropriate comments by Dr. Ezema which occurred in 2013 and Colleague B alleged inappropriate comments by Dr. Ezema on January 6, 2014.

4. As a result of its investigation, the Investigation Committee has referred the following charges to the hearing committee:

> You are guilty of professional misconduct, conduct unbecoming, or both by having breached professional and/or sexual boundaries arising from one or more of the following:
>
> a. On a number of occasions in 2013, you made inappropriate comments to Colleague A. More particularly, you invited her for coffee at your home and told her that your wife would not be at home, invited her to go on on a trip to Scotland with you, and made inappropriate comments about her appearance.
> b. On or around January 6, 2014, after asking questions about her personal relationship status, you told Colleague B that you would be taking her out for a drink.
> c. On or about December 16, 2014, while discussing a mutual patient with Colleague C, you put your arms around her and ran your tongue along her bottom lip and held on to her.

5. The issue under each of these charges is whether:

a. The College has proven the conduct alleged in the charge; and
b. The proven conduct constitutes professional misconduct or conduct unbecoming of a member, or both.

6. In addition to the issues raised by the charges themselves, there were issues raised by Dr. Ezema relating to the pre-hearing disclosure of documents, whether the Chair should recuse himself and whether a separate hearing should be held on each of the charges. The hearing committee's decision on pre-Hearing disclosure of documents is set out in its written decision dated May 10, 2017. The decision of the committee on whether the charges should be held in separate hearings is set out in a written decision dated June 12, 2017. The committee rejected Dr. Ezema's Motion that the Chair recuse himself and provided oral reasons for this decision on June 6, 2017.

PUBLICATION BAN

7. At the outset of the hearing on August 1, 2017, the College requested the committee to ban publication of the names of the three witnesses described in the charges as Colleagues A, B, and C.

8. The committee granted the College's request for the prohibition of publication of the names of Colleagues A, B, and C and indicated that the reasons for this decision would be given with the written decision on the charges themselves.

9. During the course of the hearing, Dr. Ezema requested that the publication ban be extended to three witnesses testifying under subpoena who were to be called on his behalf. The committee agreed to extend the publication ban accordingly.

10. Hearings of charges of professional misconduct or conduct unbecoming of a member of the medical profession are open hearings. Charges of professional misconduct or conduct unbecoming are serious matters. Professional misconduct or conduct unbecoming of a member of the medical profession affect the public to a lesser or greater extent. For members of the public, no other public service is more important than health care. The College has a mandate to regulate the medical profession in the public interest; to do so, it must maintain the confidence of the public that it will take issues of professional misconduct seriously and that there is a fair but rigorous enforcement of the standards of conduct we expect of physicians. Open hearings help maintain this confidence.

11. Where necessary, a hearing committee is authorized to impose a publication ban on aspects of the hearing or the decision of the committee. Section 52(5) of the *Act* provides as follows:

> With respect to any decision issued by a hearing committee, or with respect to any aspect of the hearing committee's process pursuant to this *Act* or the Regulations, the committee may impose a publication ban on such portions of its proceedings or decisions as deemed necessary by the committee.

12. The Medical Practitioners Regulations also provide for the publication ban in certain circumstances. Section 109(4) of those Regulations provides as follows:

> A hearing committee may make any orders that it considers necessary, including orders prohibiting publication or broadcasting, to prevent the public disclosure of matters disclosed in a hearing, and any decision rendered by a hearing committee, or with respect to any matter under subsection (2) or (3).

13. Under these provisions the hearing committee has discretion to prohibit publication or broadcasting of matters disclosed in a hearing. In order to exercise that discretion, the hearing committee has to decide whether the publication ban is necessary.

14. The College requested the committee to ban the publication of the names of the three witnesses that are described in the charges as Colleagues A, B, and C. They were each called to testify in support of this request. None of the three witnesses are parties in this proceeding. Only one, Colleague C, made a complaint to the College; the other two individuals were identified by the College in its investigation.

15. Colleague B seemed to us to be particularly vulnerable. She had to be compelled to attend the hearing by subpoena. She was quite emotional. She testified that the subject matter of the charges were embarrassing to her and that she lived in a small town where the circumstances of this embarrassing incident would become known and create stress and anxiety for her.

16. College C said that she had been subject to derogatory comments because of her complaint against Dr. Ezema. She said that she still has patients that she cared for at the time of the incident with Dr. Ezema and she was concerned that, if she were identified, the details of the evidence would be harmful to her.

17. Colleague A expressed concern that publication of her name in the context of the small community in which she lives would create a disincentive to other health care providers who were subject to conduct similar to that identified in the charges.

18. Dr. Ezema opposed the College's request for a publication ban of the names of these witnesses, because of the importance of the principle of open hearings and because it would only be fair to publish their names given that his name has been published and widely publicized. He argues that none of the proposed three witnesses have provided medical evidence in support of their wishes to remain anonymous. Counsel with Dr. Ezema acknowledged that Dr. Ezema would suffer no harm if this publication ban were granted.

19. In our view, these are circumstances in which it is necessary to make a limited exception to the principle of open hearings in fairness to the three witnesses to be called by the College. The hearing is open to the public. The news media is free to report on all of the evidence presented at the hearing. The public interest in open justice is not compromised by banning from publication the names of these witnesses. They are not parties to the hearing but participated only as witnesses. The subject matter of the hearing is alleged sexual advances towards them which will likely be embarrassing to them, living and working in a small town.

20. In our view, a fair hearing requires us to balance the interests of these three witnesses with Dr. Ezema's interests. Prohibiting publication of the names of these three witnesses will not result in any harm or unfairness to Dr. Ezema. On balance, we concluded that their names should be banned from publication. We think that the circumstances make it necessary to grant the College's motion.

21. During the course of the hearing, Dr. Ezema requested a publication ban of the names of the three support staff employed by the Pictou County Health Authority who testified on his behalf. This was not disputed by the College.

22. Accordingly, the hearing committee confirms its Order made at the hearing prohibiting publication or broadcasting of the names of Colleagues A, B and C and the three support staff witnesses called by Dr. Ezema to prevent the public disclosure of their names. We also confirm our Order prohibiting the publication or broadcasting of aspects of the evidence from which these six witnesses could be identified.

MANDATE OF THE HEARING COMMITTEE

23. This hearing committee has been appointed pursuant to Section 49 of the *Medical Act*. The Chair of the hearing pool, appointed under Section 47 of the *Medical Act*, has appointed a hearing committee of five persons from the hearing pool, including a public representative, three medical practitioners, and with the Chair of the hearing pool serving as the Chair of the hearing committee.

24. The mandate of the hearing committee in this case is to determine whether Dr. Ezema has engaged in professional misconduct or conduct unbecoming of a member of the medical profession. "Conduct unbecoming" and "professional misconduct" are defined in section 2 of the *Medical Act* as follows:

> (f) "Conduct Unbecoming" means conduct outside the practice of medicine that tends to bring discredit upon the medical profession.
>
> (a)(j) "Professional Misconduct" includes such conduct or acts in the practice of medicine that, having regard to all the circumstances, would be reasonably regarded as disgraceful, dishonourable, or unprofessional, and that, without limiting the generality of the foregoing, may include breaches of:

(i) the Code of Ethics approved by the Council;
(ii) the accepted standards of the practice of medicine; and
(iii) this Act and the Regulations and the policies approved by the Council.

25. It should also be noted that the definition of "professional misconduct" is inclusive. Apart from whether the conduct or actions of a medical practitioner fall within the specific clauses that follow the word "includes" in the definition, we will apply the words "professional misconduct" in their ordinary meaning consistent with the purposes of the *Medical Act*.

26. It should also be noted that "practice of medicine" is a defined term. Paragraph 2(a)(f) provides as follows:

> "Practice of medicine" means the practices and procedures usually performed by a medical practitioner and includes:
>
> (i) The art and science of the assessment, diagnosis or treatment of an individual;
> (ii) The related promotion of health and prevention of illness; and
> (iii) Such other practices and procedures as taught in universities or schools approved by the Council for licensing purposes under this *Act* and Regulations.

27. These provisions distinguish between conduct or acts in the practice of medicine and conduct outside the practice of medicine. In this case the College's allegations against Dr. Ezema all relate to incidents which occurred in the course of Dr. Ezema's practice as a psychiatrist and involved other care givers who either worked with him or shared the same workplace.

28. Accordingly, the issue for us is whether or not Dr. Ezema engaged in professional misconduct as opposed to conduct unbecoming.

29. Counsel for Dr. Ezema argues that the conduct which is the subject of the charges against Dr. Ezema does not meet the threshold of the definition of professional misconduct or conduct unbecoming in the *Act*. He raises a serious question about whether the College should be regulating casual conversations between physicians and other health care providers on the job.

30. Not every inappropriate comment by a physician constitutes professional misconduct. Physicians and other health care providers work together in delivering health care. Working together often leads to friendships and could result in a mutual attraction. We do not agree that a physician can never communicate to another health care provider their interest in going out with them or entering into a relationship. Whether such conduct reaches the threshold of professional misconduct depends on the context and on the content of the communication and is a matter of the professional judgment of the members of the hearing committee.

31. In exercising this professional judgment, we have had regard to a variety of minimum standards that apply to the type of conduct alleged in this case. It is unlawful to assault another person. *The Nova Scotia Human Rights Act* prohibits sexual harassment in the workplace. The College has adopted the Professional Standard Regarding Disruptive Behaviour by Physicians, which is a minimum standard of professional and ethical behaviour expected of physicians licensed by the College.

32. Consideration of these minimum standards will assist us in reaching a conclusion which is consistent with the declared standards of the medical profession and of society generally. However, ultimately the decision as to whether Dr. Ezema engaged in professional misconduct is a matter of professional judgment. The majority of the hearing committee are medical practitioners, accompanied by a public representative and a legally trained Chair. We are able to bring to bear our own experience and judgment on whether the conduct engaged in by Dr. Ezema was unprofessional to the extent that it constitutes professional misconduct.

ONUS OF PROOF

33. In this case, the Notice of Hearing charges Dr. Ezema with inappropriate conduct toward other health care providers in their workplace. The College bears the burden of proving the conduct alleged in the charges and of satisfying us that the conduct which is proved constitutes either professional misconduct or conduct unbecoming of a member of the medical profession.

34. The standard of proof in this matter is proof on the balance of probabilities. We must consider the relevant evidence with care to decide whether it is more likely than not that the alleged incidents occurred.

35. In *F.H. v. McDougall*, 2008 S.C.C. 53 the Supreme Court of Canada discussed the applicable standard of proof. The following paragraphs summarize the approach taken by the Supreme Court of Canada:

> [40] Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above should be rejected for the reasons that follow.
>
> ...
>
> [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.
>
> ...
>
> [49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

36. These principles apply to the hearing of charges of professional misconduct against a member of the College; see *Osif v. College of Physicians and Surgeons of Nova Scotia*, 2009 N.S.C.A. 28.

Assessment of Credibility and Reliability

37. In determining whether the College has met its burden of proof that it is more likely than not that the events alleged in the charges against Dr. Ezema occurred, the committee has to assess whether the evidence given by the individual health care providers is credible and reliable. Where this evidence is inconsistent with the evidence of Dr. Ezema, the committee will have to assess the credibility of the witnesses' evidence. We agree with the following passage from a recent decision of the Discipline Committee of the College of Physicians and Surgeons of Ontario in the *College of Physicians and Surgeons of Ontario v. Yaghini*, 2016 O.N.C.S.D. 52, at pages 14 and 15:

> The Committee must assess both the credibility of each witness and the reliability of their testimony. Credibility refers to the witness' sincerity and willingness to speak the truth as he or she believes the truth to be. Reliability relates to the witness' ability to accurately observe, recall and recount the events in issue. That is, the witness' honesty must be assessed along with whether his or her evidence is reliable or can be counted on to be accurate.
>
> The Committee is aware that there is no legal requirement that a complainant's testimony be corroborated.
>
> There is no rule governing when inconsistencies in a witness' evidence will render the evidence not credible or reliable. When assessing the credibility of the witness, inconsistencies on minor matters or matters of detail are normal and are to be expected and must be considered when weighing all of the evidence. The Committee must not consider a witness's evidence in isolation, but should

consider all of the evidence and assess the impact of the inconsistencies on the witness's credibility and reliability as it pertains to the core issue in the case.

Conduct of the Hearing

38. The conduct of the hearing by the hearing committee is governed by Section 53 of the *Medical Act* and Sections 106 to 110 of the Medical Practitioners Regulations. It is important to note that Sub-section 53 (2) provides that in a proceeding before a hearing committee, the parties have a right to natural justice. Regulation 113 (2) of the Medical Practitioners Regulations provides:

> Evidence may be presented at a hearing in any manner that a hearing committee considers appropriate, and the committee is not bound by the rules of law respecting evidence applicable to judicial proceedings, but must consider what evidence to receive in a fair manner

39. In our view, although the hearing committee is not required to follow the rules of evidence, fairness and natural justice may well require that evidence, although admissible, be given only limited weight.

40. In considering the charges against Dr. Ezema, the hearing committee must bear in mind the purpose and duties of the College as set forth in Section 5 of the *Medical Act.* The purpose and duties of the College are to protect the public interest in the practice of medicine and to preserve the integrity of the medical profession and maintain the confidence of the public and the profession in the ability of the College to regulate the practice of medicine. In our view, the public interest in the practice of medicine includes not only protection of the public but also fair treatment of medical practitioners who are accused of professional misconduct or conduct unbecoming.

ALLEGATIONS OF "COLLEAGUE A"

41. The College has charged that, on a number of occasions in 2013, Dr. Ezema made inappropriate comments to Colleague A. In particular, he is charged that he invited Colleague A for coffee at his home and told her that his wife would not be at home, that he invited her to go on a trip to Scotland with him and had made inappropriate comments about her appearance.

42. The College's investigation of a complaint from Colleague C resulted in consideration of a Workplace Complaint Form which had been filed by Colleague A, complaining of workplace harassment by Dr. Ezema on several occasions in 2013. The complaint dated March 3, 2015 includes the following:

> "On several occasions in 2013 Dr. Ezema made inappropriate suggestions and comments to me that made me incredibly uncomfortable (i.e.: inviting me for coffee at his home stating his wife would not be there, telling me I look expensive, inviting

me on a trip) and I was left feeling powerless and at a loss on how to deal with it. I spent many months taking the long way around the halls to avoid running into him and isolating myself in my office to again avoid the potential of this behaviour continuing. Finally in December, 2014 when I was unsuccessful at avoiding him he made a comment that a co-worker in a nearby office heard as well and I knew I had to do something or this behaviour would continue.

Because I felt that a social worker making a formal complaint against a Doctor would likely be discouraged and, to be honest, not dealt with I made the choice to send an email asking him to stop (the email is attached). Sending the email was effective as Dr. Ezema did come to my office to apologize and the inappropriate behaviour stopped."

43. The email referred to in the complaint was an email sent December 24, 2013 from Colleague A to Dr. Ezema which stated as follows:

> "This is a very awkward note to write and I hope you can hear what I am writing in the respectful tone in which it was written.
>
> I know that it might be common in many work places to harmlessly flirt with colleagues but I am incredibly uncomfortable with this practice. I should have addressed this immediately but instead have tried to avoid interacting with you; which is not an effective way of letting you know how I feel.
>
> After a comment you made last week, I knew I must ask you to please refrain from interacting with me in this manner. Even though this may be a form of humor, it is not something I am comfortable with.
>
> Thank you in advance for respecting my wishes."

44. Colleague A is a social worker employed by the Nova Scotia Health Authority. She worked for the Pictou County Health Authority. She did not work with Dr. Ezema, but her office was in close proximity to his.

45. Colleague A testified to the charges against Dr. Ezema that involved her. There are three separate incidents referred to in the charges.

A. The Keurig Coffee Incident

46. Colleague A testified that she met Dr. Ezema shortly after he began work for the Pictou County Health Authority in December, 2012. She testified that within weeks of his coming - "January probably" - he came to her office and after an exchange of pleasantries, she pointed to the Keurig coffee maker in her office. She said she told him that he was welcome to use it and that he responded that she should come to his house for coffee, that his wife would not be home

and gave her his address on Rowan Ave in New Glasgow. She responded "No - this is for coffee here". This exchange made her very uncomfortable.

47. Dr. Ezema testified that this incident never happened. He denies inviting Colleague A to his house for coffee in the absence of his wife. He does not drink coffee. He said there is a canteen just outside of his office where coffee is served and that he doesn't even go there.

48. Dr. Ezema also said, up until January 20 or 21, 2013 he was living in a guest house provided by the Health Authority. When he had picked out a house to buy on Rowan Ave, it was common knowledge in the workplace. He testified that Colleague A came to congratulate him on buying this particular house. He said that, if Colleague A was saying that he had invited her to his house on Rowan Ave in January, this was not possible because he did not move in until January 20th or 21st and after that had to unpack all of his family's belongings.

49. Dr. Ezema stressed that he does not drink coffee, and if he had invited her to his house he would be asking her to come for a cup of tea. He said it was not possible to invite anybody to his house for coffee and that Colleague A's testimony was "absolutely not true and not possible".

B. Scotland

50. Colleague A testified that on another occasion, Dr. Ezema came into her office and said that he was going to Scotland and that she should join him: "I am going to Scotland; you should come with me". She testified that her reply was this was a trip he should take his wife on. His answer was "Well you should come with me".

51. Colleague A testified that after the Scotland comment, she started to avoid Dr. Ezema. She said she kept her door closed. She adopted strategies to avoid meeting him in the hallways where they worked.

52. Dr. Ezema denied the account given by Colleague A. He testified that his secretary sent a notice that he was going to be away for a week or two. A member of the support staff who does his bookings, came to his office and discussed his travel to Scotland where he was planning to take a course. He says that Colleague A came out of her office and joined the conversation saying "Wow, you are going to Scotland. I have not been to Scotland. I would like to go to Scotland." Dr. Ezema testified that he did not ask Colleague A to come with him to Scotland and that she did not tell him that this is a trip he should take his wife on.

53. The member of the support staff referred to by Dr. Ezema was called as a witness by Dr. Ezema and testified about his good character and the respectful nature of his interactions with support staff. Dr. Ezema's counsel did not ask her anything about the "Scotland" incident.

c. Expensive Boots

54. Colleague A testified that in March, 2013 she met Dr. Ezema in the hallway and was not able to avoid him. She said that he made a comment about the boots she was wearing "Those boots look expensive" and added "You look expensive". She said that the tone of the comment "you look expensive" felt sexualized.

55. Dr. Ezema testified that in December, 2012, before moving into his house in New Glasgow, while living in the guest house provided by the Health Authority, he did not have proper boots. At the first serious snow of December he had frost bite. He said that it was incredibly painful and that he went into his office, took off his shoes and took off his socks. Someone came by and saw this and then called others so a group gathered in front of his door, telling him that he should be wearing winter boots. He said that one of the people standing in front of his door was Colleague A and that she showed him her boots which were knee length. He thought it was leather and replied that he wasn't going to buy a leather boot this winter, saying "this is expensive". She explained that the boot was not leather and that you could get it at Wal-Mart for about $20.

56. Dr. Ezema testified that he did not tell Colleague A that she looked expensive; the only reference to expensive related to winter boots.

57. Dr. Ezema testified that the other persons present included three members of the support staff who worked with him. All three were called as witnesses by Dr. Ezema and testified to his good character and respectful manner with staff. They were not asked about the "expensive boots" incident.

D. Other Evidence Concerning Colleague A

58. In addition to the evidence about the three incidents covered by the charge against Dr. Ezema, there was evidence of Colleague A's reaction to her encounters with Dr. Ezema.

59. Colleague A testified that she recalled meeting Dr. Ezema when he arrived in December, 2012. She said that Dr. Ezema came to her door within a few days. She said that he pointed to her name plate, commenting that there was no "Dr." in front of her name. Colleague A says that she laughed, but that the comment seemed random and off putting and she answered with "No, there isn't".

60. Dr. Ezema testified that none of this happened. He recalled that soon after he arrived in New Glasgow, he made a comment to Colleague A about the day planner she had on the door to her office. He told her that it was excellent and asked her where she got it, and Colleague A told him that she made it herself – "she laughed, I laughed."

61. With respect to Colleagues A's testimony, Dr. Ezema said "it never happened".

62. A further exchange occurred close to Christmas in 2013. Colleague A testified that she ran into Dr. Ezema in the hallway. He asked her "Are you ready for Christmas?" She replied "yes, are you?" She testified that Dr. Ezema replied, "I'm still waiting for you."

63. Colleague A testified that Dr. Ezema's posture and tone in stating those words made her very unsettled. She said she spoke to a colleague, whose office was nearby and who said to her, "Did I just hear what I think I heard?"

64. Colleague A's colleague was not called to testify. The charges against Dr. Ezema do not include the Christmas 2013 discussion. We accept that this discussion is part of the narrative leading to Colleague A's decision to write a letter to Dr. Ezema in December, 2014, but we give no weight to the words attributed to this other colleague.

65. Dr. Ezema said that he met Colleague A in the hallway and she asked him if he was ready for Christmas and he replied, "I am still waiting for you to bring on Christmas." He says that she laughed and he laughed. In cross-examination he indicated that he said, "I am still waiting for you to declare Christmas."

66. Colleague A testified that she was shaken by this last comment and felt the need to address something to Dr. Ezema. On December 24, 2013, she sent Dr. Ezema the email which is referred to above asking him to refrain from interacting with her in a manner which made her feel uncomfortable.

67. Dr. Ezema was away on vacation. When he returned and read Colleague A's email, he went to her office. Colleague A testified that he said that he was sorry and that "I hope you don't think this is sexual harassment" and she replied, "Thanks, I just want it to be over."

68. Dr. Ezema testified that when he read the email quickly, he assumed that it referred to a gift of chocolate that he had left for her before Christmas. He went to her office telling her that he had received the email and wanted to talk about it, but she "shut him down" and would not discuss it. Dr. Ezema denied saying anything about sexual harassment.

ANALYSIS OF COLLEAGUE A'S ALLEGATIONS

69. It is impossible to reconcile the evidence of Colleague A and Dr. Ezema. Essentially, Dr. Ezema denies what Colleague A states about the coffee incident, the invitation to Scotland incident, and the expensive boots incident looked at in isolation. His denial of the coffee incident might be plausible. However, his account of the Scotland incident and the expensive boots incidents do not seem plausible to us. In our opinion, it is unlikely that Dr. Ezema's account of the Scotland incident and the expensive boots incident is true. Three witnesses whom Dr. Ezema claims were present during the "expensive boots" incident were present and gave evidence at the hearing, but were not asked about Dr. Ezema's version of that incident. Dr. Ezema said that a member of the support staff was also present at the invitation to Scotland incident. Although she testified on Dr. Ezema's behalf, in the hearing she was not asked about that charge. We infer

that the three members of the support staff who testified were not asked to testify about the expensive boots incident or the invitation to Scotland incident because they would not confirm Dr. Ezema's accounts.

70. On the other hand, Colleague A's evidence was clearly and sincerely given. It consistently painted a picture of Dr. Ezema making advances towards her which she did not invite or reciprocate. The members of the committee found her evidence to be convincing. Her email in December, 2013 and the complaint that she wrote to the Health Authority when she left employment in March, 2015 confirm how seriously she took these incidents and support her testimony about the impact of these incidents on her personally. Taking her evidence into account and our conclusion that we cannot accept Dr. Ezema's denial that these incidents occurred, we conclude that it is more likely than not that the events described by Colleague A occurred.

71. In our opinion, the evidence of Colleague A should be preferred to the evidence of Dr. Ezema where they differ. We find as a fact that on a number of occasions in 2013, Dr. Ezema made inappropriate comments to Colleague A. In particular, he invited her for coffee at his home telling her that his wife would not be at home, invited her to go on a trip to Scotland with him and made inappropriate comments about her appearance.

72. Furthermore, we find that Dr. Ezema's conduct amounts to professional misconduct. Although they did not work directly together providing health care services to patients, they both worked as part of the outpatient services provided by the Pictou County Health Authority. Dr. Ezema was clearly engaged in his work as a psychiatrist when he engaged in a series of comments to Colleague A that he knew or ought reasonably have known were unwelcome.

73. One of the earliest encounters between Dr. Ezema and Colleague A involved his invitation to have coffee in his home when his wife would be absent. Colleague A immediately indicated that this attention was unwelcome by saying "No, it is for coffee here". A reasonable medical practitioner ought to know that this invitation with sexual connotations had been rebuffed and was not welcome. If he got the message and never again made similar comments or other advances towards Colleague A, it might be difficult to find that the single act constituted professional misconduct.

74. However, Dr. Ezema did not get the message and made another comment implying sexual connotations by inviting Colleague A to go with him to Scotland. Again, Colleague A clearly rebuffed his advance by telling him that this was a trip he should take his wife on. A reasonable physician would know that this was unwanted attention and was unprofessional.

75. Again, Dr. Ezema did not get the message. Although Colleague A tried to avoid meeting him in the hallway, they met in the hallway near their offices and he told her that her boots looked expensive and that "you look expensive". In our view, this was a demeaning comment connoting his view that Colleague A wearing those boots looked like a prostitute.

76. An important part of the context for these interactions is that there is a significant difference in the status of the psychiatrist and the social worker in this situation. Dr. Ezema was not her supervisor or manager and did not have an obvious means to exercise power over her but their difference in status put her at a disadvantage.

77. Dr. Ezema knew or ought reasonably to have known that his conduct towards Colleague A was unwelcome and vexatious. In our opinion, his conduct constituted sexual harassment of Colleague A. It clearly breached professional and sexual boundaries and constituted professional misconduct.

78. If we are mistaken in our conclusion that Dr. Ezema's conduct was conduct "in the practice of medicine", we think that it nonetheless constituted professional misconduct in its ordinary meaning consistent with the purposes of the *Medical Act*.

79. If we are wrong and Dr. Ezema's conduct was conduct outside the practice of medicine, we find that his conduct tends to bring discredit upon the medical profession. As a result of Dr. Ezema's conduct Colleague A made a complaint to the Pictou County Health Authority and left her employment to work elsewhere. In all of the circumstances, we have no doubt that Dr. Ezema's conduct towards a fellow professional in the workplace is conduct that would bring discredit upon the medical profession.

ALLEGATIONS OF "COLLEAGUE B"

80. The College has charged that Dr. Ezema, on or about January 6, 2015, after asking questions about her personal relationship status, told Colleague B that he would be taking her out for a drink.

81. The investigation of the complaint to the College from Colleague C, led to consideration of an Incident Report filed with the Pictou County Health Authority by a registered nurse. The Incident Report states as follows:

> After my client had left the interview room I stayed back to clarify some medications. I wanted to let Dr. Ezema (Psychiatrist) know that the IM antipsychotic (Invega), he had ordered for the client, may take a few days for Pharmacy to retrieve. I had been standing up by the closed door when I was explaining this. Dr. Ezema asked me to sit down (I thought he wanted to further discuss the client) and started asking me some general/personal questions regarding my Holidays and work.
>
> Dr. Ezema: How were your holidays?
> Me: Good. I had Christmas off which was nice.
>
> Dr. Ezema: Did you stay around here?
> Me: Yes, all of family is here. Did you and your family enjoy the holidays?

Dr. Ezema: So what do you do tomorrow?
Me: I'm not working tomorrow. I am casual right now and hoping to get full time.
Dr. Ezema: Yeah why not work at the clinic? Do you have to be trained for there?
Me: Yes, that's something I will look into.

He then began to ask me even more personal questions that made me extremely uncomfortable.

Dr. Ezema: What did you do on New Years Eve? Did you drink?
Me: No, I actually didn't do much, just stayed home.
Dr. Ezema: With your boyfriend?
Me: Yes
Dr. Ezema: I'm going to take you out for a drink sometime
Me: What?
Dr. Ezema: Yeah, I'm going to take you out for a drink...sometime yeah.

It would have been obvious at this point that I was very uncomfortable. He then switched the topic to a former patient. I responded to this comment about the former patient and then I left the room immediately making an excuse that I had to check a patient.

82. Colleague B's duties included assisting a staff psychiatrist in the assessment of new patients and the development of a plan for the patient's care in the hospital. Dr. Ezema was a staff psychiatrist on the Psychiatry Unit and worked with Colleague B regularly while she worked on the Unit.

83. Colleague B testified that on January 6, 2014, she participated in the assessment of a patient with Dr. Ezema in the Psychiatry Interview Room on the Unit. After the patient had left the room, she got up to go out the door. As she was leaving she told Dr. Ezema that the medication Dr. Ezema ordered for this patient was not available in the pharmacy. She did not recall Dr. Ezema's response to this information. What she recalls is that Dr. Ezema asked her to sit down and he started asking her personal questions. He asked her what she did on New Year's Eve and did she drink. Dr. Ezema asked her if she spent time with her boyfriend. He then said "I'm going to take you out for a drink". She replied "what?" and he repeated "I'm going to take you out for a drink". He then changed the topic back to the patient.

84. Colleague B says that during this exchange she sat on a chair opposite Dr. Ezema's desk and he sat behind the desk. Colleague B testified that she felt very uncomfortable. She did not understand why he was asking her these questions of a personal nature, which had nothing to do with work. She testified that she thought that Dr. Ezema must have known that she felt uncomfortable and quickly switched the topic back to the patient they had been discussing.

85. As a result of these circumstances, Colleague B filed the incident report which is quoted above.

86. On cross examination, Colleague B was asked about her evidence concerning the medication which had not been available from the pharmacy. She answered that she thought he had asked on rounds to check whether the drug (Invega) was available.

87. Colleague B was referred to the incident report and indicated that she did not recall questions and answers listed up to the point that Dr. Ezema asked her what she had done on New Year's Eve. It was suggested to her that after the questions about what she had been doing on New Year's Eve, drinking or what she had done with her boyfriend, she asked Dr. Ezema if she was making him nervous. She said she did not ask that. She said that she did not think it was appropriate to be asked about New Year's Eve and drinking and that she felt uncomfortable. She testified that she wished she had been more assertive and she did not think his comments were professional.

88. Dr. Ezema testified that on January 6, 2014, after the patient was assessed, that Colleague B left the psychiatry interview room to walk the patient back to the nursing station and then on to the common room in the Psychiatry Unit. Meanwhile, he completed the chart to take back to the nursing station. He says that the next thing that happened was the door opening and closing and Colleague B was right in front of his desk leaning in. "She was leaning on me". He says he asked her to sit down and she said, "Am I making you nervous?" He says he asked her if everything was ok and she answered "Yeah", he asked her was Christmas ok and she said "Yeah", he asked her whether there was "any problem, anywhere, anything" and she said "Oh, everything is fine". Dr. Ezema stated there was a long pause, "I was looking at her. She was looking at me and then finally, I kept quiet and she left".

89. Dr. Ezema denied that Colleague B discussed any medication with him and explained that the drug Invega was not stocked in the pharmacy, but he had access to samples. He was asked whether he had said to Colleague B that he was going to take her out for a drink. He said no, that he didn't drink at all. He testified that he didn't observe that she was uncomfortable.

90. Colleague B's Incident Report was provided to Dr. Ezema's Director, Dr. Theresa Vienneau. She testified that she spoke to Dr. Ezema about the Incident Report and she recalled that he told her that he was preoccupied with writing notes when the staff member was standing right there at the end of his desk. He said that he was surprised to see her there. He said there were a couple of comments about the patient's interview and as she was standing there he asked her about her holiday and nothing that he recalled of an invitation that they go out together.

91. On cross examination, Dr. Vienneau was asked whether Dr. Ezema told her that Colleague B had returned to the office and that she had closed the door behind her. Dr. Vienneau said "no". She was asked whether Dr. Ezema told her that Colleague B had leaned against the desk. He had told her that she was standing at the very edge of the desk. Dr. Vienneau was asked whether he told her that Colleague B had asked if she was making him nervous. She answered "No".

92. The Committee found that Colleague B seemed genuine and honest. She was very emotional. She had not complained to the College and had been compelled to attend the hearing by subpoena knowing she did not wish to attend. The committee could see that she had no reason to misrepresent what happened. She prepared notes of the exchange within a few days. She seemed genuinely disturbed by what she thought was an inappropriate and unprofessional exchange with Dr. Ezema.

93. We found it hard to accept Dr. Ezema's evidence. His characterization of her leaning over the desk and asking whether she made him nervous seemed quite inconsistent with her whole demeanour before us. Dr. Ezema did not include that characterization in his discussion with Dr. Vienneau. It seems very unlikely to us. Colleague B seemed to be a very timid person and Dr. Ezema's characterization of her acting aggressively, as he described, is not convincing.

94. We have concluded that Colleague B's evidence was credible and reliable. We find that he asked her about her personal relationship status and made the comment "I'm going to take you out for a drink sometime". In response to her answer "what?" he again said, "I'm going to take you out for a drink".

95. The committee accepts that Dr. Ezema's conduct was a boundary violation with a staff member. However, in our view, Dr. Ezema's conduct does not constitute professional misconduct or conduct unbecoming of a member of the College.

96. We recognize that there was a power imbalance between Dr. Ezema and Colleague B. She was a registered nurse and he is a psychiatrist. Dr. Ezema asked her questions about her personal relationship status and brought up the possibility of going out with her. This invitation was not welcomed. However, Dr. Ezema observed her discomfort and changed the subject to a discussion of their patient. He did not repeat his conduct. He continued to work with Colleague B.

97. Dr. Ezema's conduct did not breach the Professional Standard Regarding Disruptive Behaviour by Physicians. Under that Standard, inappropriate words that constitute boundary violations with other care providers breach a minimum of professional and ethical behaviour expected of physicians if the words interfere with the physician's ability to work with others to the extent that quality health care delivery may be impeded. There is no evidence that Dr. Ezema's comments to Colleague B interfered with his ability to work with her to the extent that his behaviour interfered with quality health care delivery. On the contrary, to Colleague B's credit, she continued to work with Dr. Ezema. There is no evidence that this incident interfered with quality health care delivery.

98. In our view, Dr. Ezema's conduct would not be regarded by a reasonable person as disgraceful, dishonourable or unprofessional and does not constitute professional misconduct.

ALLEGATIONS OF "COLLEAGUE C"

99. The College alleges that on or about December 16, 2014, while discussing a mutual patient with Colleague C, Dr. Ezema put his arms around her and ran his tongue along her bottom lip and held on to her.

100. In December, 2012, Dr. Ezema had moved to Nova Scotia to take a position as a Psychiatrist with the Pictou County Health Authority.

101. The complainant, Colleague C, was a nurse employed by the Pictou County Health Authority. She and Dr. Ezema were part of the team responsible for care of clients with mental health issues. Dr. Ezema was the psychiatrist on that team.

102. Dr. Ezema and Colleague C had a good working relationship before an incident which occurred on December 16, 2014. Dr. Ezema was well liked by his colleagues and by the support staff who worked with him. The Director of the Community Mental Health Support Team testified that she found him to be a very professional, friendly, and respectful colleague. The support staff described him as "fabulous" to work with or "good" to work with. Colleague C described him as "very friendly, very approachable, and very good to work with. We enjoyed working with him".

103. On January 5, 2015, Colleague C made a complaint to the Pictou County Health Authority in respect of an incident which had occurred on December 16, 2014. Her complaint stated:

> Dr. Ezema put his arms around me in a hug and ran his tongue along my lower lip. I was attempting to pull away and he held me to him. I did pull away and left the file room immediately, went to my office and gathered my belongings and left the building through the back door as I didn't want to risk running into Dr. Ezema if I left the way I usually do through the front.

104. Colleague C also made a written complaint to the College dated February 24, 2015 which included the following description of the complaint:

> On December 16, 2014, Dr. Ezema put his arms around me in a hug and ran his tongue along my lower lip. I attempted to pull away from him and he held onto me and prevented me from leaving. I did manage to pull away and left the file room immediately. This incident happened at approximately 5:45 to 6:00 p.m. in the file room. Just prior to this happening we had been discussing a mutual patient. I work directly with Dr. Ezema.

105. At the hearing, Colleague C testified that on December 16, 2015 she was working late. She went to the room where client files are kept. Dr. Ezema was in the file room as she came in the door. She and Dr. Ezema had a discussion about a client who had been unstable and discussed whether the client's medication should be changed. Dr. Ezema was leaving on a vacation in a few days and Colleague C wished him a good holiday.

106. During this discussion, Colleague C was standing in the doorway to the file room. After they exchanged holiday greetings Dr. Ezema held out his arms to offer her a hug. She says what followed was Dr. Ezema ran his tongue along her bottom lip and she couldn't pull back to get away from him. She was able to twist around and left the room. Colleague C testified that she could not remember where Dr. Ezema's arms were when these things happened.

107. Colleague C testified that Dr. Ezema's conduct was completely inappropriate and was not an acceptable greeting in the workplace. She was upset and reported the incident to her team when they met. She told the team that Dr. Ezema kissed her and she described the incident as a hug and him running his tongue along her lower lip. Colleague C later made a written complaint to the Pictou County Health Authority and a complaint to the College.

108. In cross-examination, Colleague C was pressed on the details of the incident. Her evidence was consistent that Dr. Ezema had held out his arms to offer a hug and then had run his tongue along her lower lip, holding her and preventing her from moving. However, in response to questions on cross-examination, more details about the incident were added. In particular, she added that when Dr. Ezema offered her a hug, she "leaned in with the left side of her face cheek to cheek with the left side of his face going around from right to left she couldn't get her head back", and she turned to her right to get away.

109. Counsel for Dr. Ezema referred Colleague C to what he described as accounts given by her colleagues in the team meeting at which she reported the incident. He suggested to her that she had reported only that Dr. Ezema had kissed her and that no other details were given. She disagreed with this suggestion and acknowledged saying that Dr. Ezema had kissed her, but that she had described him running his tongue along her bottom lip and holding her so she was unable to move. Colleague C explains that she had used "kissed" as a short form but that she had described the incident in detail.

110. Counsel for Dr. Ezema suggested to her that Dr. Ezema had held out his left arm only. She disagreed with this suggestion. As she had acknowledged in her direct examination, she could not recall where on her body Dr. Ezema placed his arms when he embraced her but that he prevented her from moving until she was able to twist away and leave the file room.

111. Dr. Ezema acknowledged that there was an incident in the file room involving Colleague C on December 16, 2014. He agreed that he met Colleague C as he was going out of the file room and had a discussion about the upcoming holidays.

112. Dr. Ezema denied that he held out two arms to offer a hug to Colleague C. He explained that in his culture men do not offer a handshake to a woman unless she initiates the handshake. Nevertheless, he held out his left arm to her. He testified that Colleague C responded to this invitation by leaning in cheek to cheek on his right cheek, but that she suddenly left the room. He denied that he had stuck out his tongue, had grabbed Colleague C or that there was any contact with lips or mouth. As he described the incident, he initiated the greeting by extending

his left arm and Colleague C leaned down on him as he offered his right cheek, but that all he did was extend his left arm. On direct-examination he was asked what was in his mind in extending his hand to Colleague C in the first place, he answered that he was standing there and she was on the left side so it was just an awkward handshake – "it was supposed to be a handshake, a quick handshake and I'm out of there."

113. In cross-examination, Dr. Ezema testified that he extended his hand in the first place and that when he did that "instead of an awkward handshake [Colleague C] came down on me, she leaned on me... I offered my right cheek. I did not initiate the cheek to cheek, what I initiated was the whole greeting in the first place because I was the one who stretched out my hand."

114. We found that Colleague C was consistent in her evidence throughout. She clearly stated Dr. Ezema had held out both arms offering a hug and that he had ran his tongue along her lower lip, holding her so that she could not move. The additional details elicited on cross examination are not inconsistent with her account that he ran his tongue along her lower lip and held her so she could not move. We found that her evidence was sincerely given and consistent.

115. Dr. Ezema's explanation that he held out his left hand because in his culture a man does not initiate a handshake with a woman is not convincing, nor is his stress on the differences between his height and Colleague C's height. He admitted that he had initiated an awkward handshake with Colleague C. Furthermore, his explanations are not consistent with his letter of April 7, 2015 to the Pictou County Health Authority and his response to the complaint to the College.

116. In his letter of April 7, 2015 to the Pictou County Health Authority, Dr. Ezema describes his interaction with Colleague C as "a significant misunderstanding" saying "I had intended my actions to be a cultural greeting" and adding, "I now understand that cheek to cheek greetings are not appropriate in the workplace". In this letter and his reply to the College, Dr. Ezema acknowledges that he crossed a boundary by his conduct. These previous statements are inconsistent with his insistence that all he did was extend his left arm. His point about men in his culture not initiating a handshake with a woman does not provide a satisfactory explanation in view of his previous acknowledgement that he initiated a cheek to cheek greeting with Colleague C.

117. We also have some concerns about Dr. Ezema's demeanour as a witness. He was often reluctant to answer straightforward questions on cross-examination. He became quite angry when questioned about the College's investigation. In contrast, Colleague C was calm and clear and withstood a very rigorous cross-examination. We accept that her evidence was sincere and honest.

118. In our view, Colleague C's evidence was clear, cogent and convincing. We do not accept Dr. Ezema's evidence of the incident. Where Dr. Ezema's evidence conflicts with the evidence of Colleague C, we accept her evidence.

119. In our view, the College has proved that on or about December 16, 2015, while discussing a mutual patient with Colleague C, Dr. Ezema put his arms around her and ran his tongue along her bottom lip and held on to her.

120. Given our findings of fact, there is no doubt that Dr. Ezema's conduct amounted to professional misconduct. No medical practitioner engaged in the practice of medicine is entitled to treat other health care providers with unwanted physical conduct of a sexual nature in their workplace. It constitutes an assault and sexual harassment.

Summary

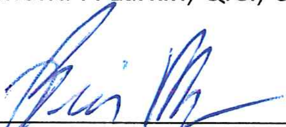
121. In summary, the hearing committee finds that Dr. Enyinnaya Ezema is guilty of professional misconduct having breached professional and/or sexual boundaries arising from inappropriate comments made on a number of occasions in 2013 to a professional colleague in the workplace and that on or about December 16, 2014, while discussing a mutual patient with a work colleague put his arms around her and ran his tongue along her lower lip and held on to her.

122. The hearing committee dismisses the complaint against Dr. Ezema relating to charges that on or about January 16, 2014, after asking questions about her personal relationship status, he told a colleague that he would be taking her out for a drink. We find that Dr. Ezema's conduct in relation to this incident did not constitute professional misconduct.

123. The hearing committee will now convene a hearing on the disposition of the two charges upon which Dr. Ezema has been found to have engaged in professional misconduct.

Decision issued this 11th day of September, 2017.

Raymond F. Larkin, Q.C., Chair



Dr. Brian Moses

Dr. P. Scott Theriault

Dr. Ethel Cooper-Rosen

Ms. Gwen Haliburton

IN THE MATTER OF:	The *Medical Act*, S.N.S. 2011, c. 38

and

IN THE MATTER OF:	The College of Physicians and Surgeons of Nova Scotia ("the College")

and

IN THE MATTER OF:	A Hearing conducted pursuant to s. 53 of the *Medical Act* concerning Dr. Enyinnaya Ezema

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Hearing Committee Decision on Disposition

Date Heard:	January 12, 2018
Last Submission:	May 24, 2018
Location:	Halifax, Nova Scotia
Hearing Committee:	Mr. Raymond F. Larkin, Q.C.
	Dr. Brian Moses
	Dr. P. Scott Theriault
	Dr. Ethel Cooper-Rosen
	Ms. Gwen Haliburton
Counsel:	Hector J. MacIsaac, Ms. Loretta M. Manning, Q.C. and Amy E. MacGregor, Counsel to Dr. Enyinnaya Ezema
	Ms. Jane O'Neill, Q.C., and Ryan Baxter, Counsel for the College of Physicians and Surgeons of Nova Scotia

1. Introduction

1. In its decision of September 11, 2017, the Hearing Committee found that Dr. Enyinnaya Ezema was guilty of professional misconduct, having breached professional and sexual boundaries with colleagues in his workplace. He made inappropriate comments on a number of occasions in 2013 to one of his colleagues in the workplace. While discussing a mutual patient with another work colleague, he put his arms around her and ran his tongue around her lower lip while holding on to her. The Hearing Committee dismissed a third complaint against Dr. Ezema which related to charges that in January, 2014 he had asked questions of a professional colleague about her personal relationship status and had told her that he would be taking her out for a drink; the hearing committee found that this incident occurred but that it did not constitute professional misconduct in all of the circumstances.

2. The disposition of the two charges upon which Dr. Ezema has been found to be guilty of professional misconduct is governed by the *Medical Act*, SNS 2011 c. 38, Section 54(1) provides as follows:

> 54 (1) Where a hearing committee finds professional misconduct, conduct unbecoming, incompetence or incapacity, the committee shall dispose of the matter in accordance with the regulations.

3. Section 115 of the *Medical Practitioner Regulations* authorizes a hearing committee to dispose of a matter in which it finds professional misconduct in any manner it considers appropriate. Section 115 provides as follows:

> **Disposition by hearing committee**
>
> 115 A hearing committee that finds professional misconduct, conduct unbecoming, incompetence or incapacity on the part of a respondent **may dispose of the matter in any manner it considers appropriate,** including doing one or more of the following, and must include orders for the action in the committee's disposition of the matter:
>
> (a) **revoke the respondent's registration or licence;**
>
> (b) for a respondent who held a temporary licence at the time of the incident giving rise to the complaint, revoke the respondent's ability to obtain registration or require the respondent to comply with any conditions or restrictions imposed by the committee if registration is granted;
>
> (c) authorize the respondent to resign their registration;
>
> (d) **suspend the respondent's licence for a specified period of time;**
>
> (e) suspend the respondent's ability to obtain a licence for a specified period of time;

(f) suspend the respondent's licence pending the satisfaction and completion of any conditions a hearing committee orders;

(g) impose any restrictions or conditions, or both, on the respondent's licence for a specified period of time;

(h) reprimand the respondent and direct that the reprimand be recorded in the records of the College;

(i) direct the respondent to pass a particular course of study or satisfy a hearing committee or any other committee established under the Act of the respondent's general competence to practise or competence in a particular field of practice;

(j) refer the respondent to for a competence assessment as determined by the Registrar, and require the respondent to pay for any costs associated with the assessment;

(k) direct the respondent to pay a fine in an amount determined by the hearing committee for findings that involve

(i) practising while not holding a valid licence to practise, or

(ii) professional misconduct or conduct unbecoming the profession;

(l) **direct the respondent to pay any costs arising from compliance with an order under clause (g), (i) or (j);**

(m) publish or disclose its findings in accordance with the Act and these regulations.

[emphasis added]

4. In considering the appropriate disposition of this matter, we must keep in mind the purpose of the College set forth in Section 5 of the *Medical Act*, which provides in part as follows:

Purpose and duties of College

5 In order to

(a) serve and protect the public interest in the practice of medicine; and

(b) subject to clause (a), preserve the integrity of the medical profession and maintain the confidence of the public and the profession in the ability of the College to regulate the practice of medicine, the College shall

(c) regulate the practice of medicine and govern its members through

(i) the registration, licensing, professional conduct and other processes set out in this Act and the regulations,

(ii) the approval and promotion of a code of ethics

(iii) the establishment and promotion of standards for the practice of medicine, and

(iv) the establishment and promotion of a continuing professional development program; and

(d) do such other lawful acts and things as are incidental to the attainment of the purpose and objects of the College.

5. The mandate of the College is to preserve and protect the public interest in the practice of medicine. Serving and protecting the public interest in the practice of medicine requires protection of the public, which itself includes protection of workplace Colleagues. The overriding consideration in fashioning an appropriate disposition of this case must be the public interest in protecting workplace colleagues from professional misconduct of a sexual nature by physicians in that workplace.

6. We must also consider the objective of maintaining the confidence of the public in the ability of the College to regulate the practice of medicine. The public is legitimately concerned about sexual misconduct in the workplace and expects the medical profession to take it seriously, not to minimize or excuse professional misconduct of a sexual nature.

7. Section 15 of the *Medical Practitioner Regulations* provides for "disposition" not "penalty". It provides a wide range of options for disposition where there is a finding of professional misconduct. We have to assess these options in the circumstances of this case, primarily by considering whether they will protect the public and maintain the confidence of the public in the ability of the College to regulate the medical profession.

2. Positions of the Parties

8. The College requests the Hearing Committee to revoke Dr. Ezema's license to practice. It argues that sexual harassment in the workplace, particularly when it involves a person in authority, is unacceptable and that society will no longer tolerate sexual harassment or assault. The College submits that the decisions of the College must reflect the seriousness of this conduct to deter it and to demonstrate that the College has the public interest at the forefront.

9. Dr. Ezema says that, given the findings of fact in this case, an appropriate penalty would be no suspension or a suspension of less than three months, with time served, and an order that he attend the boundaries course, which he has already completed.

3. Disposition Principles

10. The principles that should apply to the College's request for revocation of Dr. Ezema's license are discussed in the recent decision of the Ontario Court of Appeal in *College of Physicians and Surgeons of Ontario v Dr. Javad Peirovy,* 2018 ONCA 420. This decision was issued by the Ontario Court of Appeal on May 3, 2018 and was provided to the Hearing Committee shortly after that date. The parties were given an opportunity to make submissions on its application; these were completed on May 24, 2018.

11. In the *Peirovy* case, the Discipline Committee of the College of Physicians and Surgeons of Ontario found that Dr. Peirovy was guilty of sexual abuse in relation to four patients. The abusive conduct consisted of medically unnecessary touching of the breast or nipples of the patients during medically

required chest examinations conducted using a stethoscope. With respect to a fifth patient the Discipline Committee found that Dr. Peirovy had asked the patient for a date immediately after his medical examination of her during which her breasts were exposed. The Discipline Committee suspended Dr. Peirovy's license for 6 months, ordered him to submit to a reprimand and imposed conditions and restrictions on his return to practice. The Ontario Divisional Court reversed the decision of the Discipline Committee, finding that the Committee had improperly fettered its discretion by proceeding on the basis that "revocation of registration is reserved for egregious conduct or offenders with a high risk to reoffend". The Ontario Court of Appeal commented favourably on the approach taken by the Discipline Committee in the following passages:

> [63] The Discipline Committee explained that protection of the public is generally taken as the paramount principle of sentencing. It is then that the Discipline Committee stated:
>
> > Although the two principles are not identical, and there will be cases where the egregious nature of the misconduct itself will demand revocation even where the risk of re-offence is low, a well-informed public would be expected to maintain confidence in a self-regulating process which results in the public being protected from abusive physicians.
>
> **[64] In this passage, the Discipline Committee was quite properly pointing out that revocation is sometimes "demanded" by egregious conduct alone. As it indicated in other parts of its reasons, however, it is tasked with arriving at a fair and just penalty that addresses all of the sentencing principles. Those principles include the paramount consideration of protection of the public, as well as maintenance of public confidence in the reputation and integrity of the profession, effective self-governance, general deterrence, specific deterrence, and the potential for the member's rehabilitation. Proportionality is also an important consideration.**
>
> [65] The Discipline Committee's reasons as a whole make clear that it did not erroneously assume that revocation was available only in a narrowly constrained set of circumstances. Rather, it concluded that the suspension and practice restrictions imposed struck the most appropriate balance between the variety of sentencing principles at play in this case.
>
> [Emphasis added]

12. In this matter, the Hearing Committee accepts that there are cases where the "egregious nature of the misconduct itself will demand revocation", as proposed by the College in this case, but in seeking a fair and just penalty we will apply the principles set out in paragraph 64 of the *Peirovy* decision, with the objective of striking the most appropriate balance between those principles as they apply to the facts in this case.

4. Protection of the Public

13. Protection of the public must be paramount in our consideration of the appropriate disposition in this matter. In our opinion, Dr. Ezema's misconduct was serious. We believe that it is important not to minimize or excuse misconduct of a sexual nature between physicians and health workers.

14. This case illustrates the harm that can result when a physician crosses professional boundaries. Dr. Ezema was persistent in making advances towards Colleague 'A', which she did not invite or reciprocate. In order to avoid his advances, she had to resort to a strategy of taking the long way around in the halls of the workplace to avoid running into him or isolating herself in her office. It reached the point that she gave up her employment, took a job with another employer with a substantial reduction in pay, and only returned to her position after Dr. Ezema moved to another location.

15. Likewise, it goes without saying that no health worker, like Colleague 'C', should be cornered in the file room for an unwanted hug and kiss from a physician.

16. We regard these incidents as serious, both as to the conduct itself and the harm done to Colleagues 'A' and 'C' as a result.

17. These health workers are members of the public that the College is mandated to protect from professional misconduct. Considering protection of the public only, Dr. Ezema's conduct calls for a disposition which makes it clear that his conduct cannot be tolerated.

5. Maintaining the Confidence of the Public in the ability of the College to Regulate the Medical Profession

18. An appropriate disposition of the matter should be one that leaves no doubt that the College takes sexual harassment and assault by physicians seriously. The serious nature of Dr. Ezema's misconduct must be considered in imposing a disposition that will maintain the confidence of the public in the ability of the College to regulate the medical profession. The decision of the College in this matter will be made known to the public. Sexual harassment and assault of hospital workers by physicians is unacceptable and the decisions of the College should reflect the seriousness of this conduct not only to deter it, but to demonstrate to the public that the College has the public interest as its primary consideration.

6. General Deterrence

19. There is no doubt that a disposition of this matter resulting in the revocation of Dr. Ezema's license to practice would send a strong message to physicians that sexual harassment of hospital staff will not be tolerated in Nova Scotia.

20. Whether revocation is the only disposition that would send that message is not as clear. We have not been presented with evidence that sexual harassment of health workers by physicians is endemic in Nova Scotia. In our opinion, we should not assume that only the most severe disposition will create the desirable level of general deterrence. A reprimand and a significant suspension would also send a strong message that the College will not minimize or excuse this kind of conduct.

7. Specific Deterrence

21. Specific deterrence is an important consideration here. If we concluded that it was unlikely that a suspension would deter Dr. Ezema from repeating acts of professional misconduct, the College's request for revocation of his license could be the appropriate disposition. If we were convinced that Dr. Ezema was unlikely to repeat his professional misconduct, a disposition other than revocation could be appropriate.

22. In our opinion, Dr. Ezema himself needs to be sent a strong message. His persistent sexual harassment of Colleague 'A' and its repetition, in another form, with Colleague 'C', demonstrates a course of conduct over time that cannot be regarded as an isolated mistake. In our opinion, there was deliberate repeated breaches of professional sexual boundaries.

23. Dr. Ezema did not admit any of his misconduct. That, of course, was his right but, even at the disposition hearing his counsel referred to our findings as allegations. Dr. Ezema's persistent denial of his conduct means that we have no evidence that he has developed insight into the impact of his conduct on his workplace colleagues.

24. In his written submissions, Dr. Ezema emphasizes the absences of any prior disciplinary history with the College and that there had been no allegations of misconduct since the incident with Colleague 'A' in December 2014. He points out that he has been proactive in taking steps to change the behaviour identified through this process, having attended the University of Toronto Boundaries Course in June 2015. He also points out that after Colleague 'A' sent him an email complaining about his conduct in December 2013, he went to her office and apologized and did not continue to harass her. Dr. Ezema also stresses the evidence that he was well regarded by his colleagues and was considered by them to maintain a high standard of professional and personal conduct with respect to patients.

25. In our view, we cannot treat Dr. Ezema's misconduct as isolated incidents. His repeated advances to Colleague 'A' ended when she complained, but he later engaged in sexual harassment and assault with respect to Colleague 'C'.

26. Although Dr. Ezema took the boundaries course at the University of Toronto in June 2015, nothing in his evidence convinces this Hearing Committee that he recognizes the professional boundaries between himself and women in his workplace that he finds attractive. In his evidence Dr. Ezema emphasized cultural differences that resulted from growing up and receiving his education in Nigeria and Cameroon and from working for several years in Ireland. We do not accept that Dr. Ezema's cultural background explains or mitigates his conduct towards Colleague A and Colleague C.

27. In our view, specific deterrence in the circumstances of this case requires a disposition that causes Dr. Ezema to understand that any future repetition of his misconduct may have the consequence of the revocation of his license sought by the College in this matter.

8. Potential for the Member's Rehabilitation

28. Given Dr. Ezema's denial of the incidents that the Hearing Committee has found in its hearing on the merits, we really have no evidence of potential for his rehabilitation.

9. Proportionality

29. None of the factors we have considered can be applied to the facts of this case in isolation. An appropriate balance between the disposition principles at play in this case must also include consideration of the principle of proportionality. Not every breach of professional sexual boundaries justifies revocation of a physician's license. Any sanction imposed in the disposition of this matter must be proportionate to Dr. Ezema's misconduct.

30. In this matter, the Hearing Committee has found Dr. Ezema guilty of professional misconduct for having breached professional and/or sexual boundaries arising from inappropriate comments made on a number of occasions in 2013 to a professional colleague in the workplace; and, that on or about December 16, 2014, while discussing a mutual patient with a work colleague, put his arms around her and ran his tongue along her lower lip and held onto her.

31. The cases which have been cited to us where revocation was imposed – *College of Physicians and Surgeons of Ontario v MMS Lee,* 2017 ONCPSD 46, and *College of Physicians and Surgeons of Ontario v Beairsto,* 2017 ONCPSD 43 – were cases that involved the sexual abuse of patients, not colleagues, and, therefore, do not provide strong guidance to us as to disposition in this case.

32. We are not convinced that these findings justify revocation of Dr. Ezema's license. While we agree with the College that sexual harassment by physicians in the workplace is unacceptable and that the College should not tolerate sexual harassment and assault of a colleague, in our opinion, revocation of his license is disproportionate to Dr. Ezema's misconduct. A disciplinary sanction short of revocation will meet the requirements of general deterrence and specific deterrence and send a strong message to the medical profession and to Dr. Ezema that this conduct cannot be tolerated.

33. On the other hand, Dr. Ezema's failure to take responsibility for his conduct at the disposition stage of this matter and the absence of any demonstration of insight into the harm caused by his conduct leaves doubt about his respect for professional boundaries which must be part of the balance in choosing the appropriate disposition.

34. We are not satisfied that revocation of his license is necessary to protect the public or to maintain the credibility of the College with the public. In our view, Dr. Ezema's conduct calls for a significant period of suspension. In order to consider the appropriate length of a suspension, previous decisions of the hearing committee or similar bodies can provide guidance.

10. Consideration of the Case Law

35. The case law provided by the parties does not support revocation of license as the disposition after a finding of sexual harassment or breach of professional and sexual boundaries in the workplace. The cases cited to us where revocation was imposed, relate to the sexual abuse of a patient. While, in this case, the power imbalance between Dr. Ezema and his workplace colleagues is a factor in weighing the seriousness of his conduct, the vulnerability of a patient to sexual abuse from a physician is significantly greater.

36. There are no previous hearing committee decisions that have been cited to us that involve the breach of professional and sexual boundaries with colleagues. Both parties cited the decision of the Hearing Committee in the matter of Dr. Oluwarotimi Fashoranti, which was decided on May 12, 2014 and upheld by a decision of the Nova Scotia Court of Appeal in *Fashoranti v College of Physicians and Surgeons*

of Nova Scotia, 2015 NSCA 25. In that case, the Hearing Committee imposed a 3-month suspension for an inappropriate examination of a female patient. The disposition of a 3-month suspension is obviously a significant sanction but not a strong precedent for us because it involved a single incident with a patient in contrast to the repeated sexual harassment of workplace colleagues by Dr. Ezema in this matter.

37. The parties also cited decisions of the College of Physicians and Surgeons of Ontario that involved the sexual harassment of co-workers by physicians. In *College of Physicians and Surgeons of Ontario v Minnes,* 2015 ONCPSD 3, Dr. Minnes engaged in repeated boundary violations with female nursing staff. The behaviour consisted mainly of unwanted and inappropriate touching. He accepted responsibility for his misbehaviour, attended therapy and made progress in understanding his behaviour and its impact on others. The Discipline Committee imposed a reprimand and a suspension of 3-months.

38. In *College of Physicians and Surgeons of Ontario v Abawi*, 2014 ONCPSD 10, Dr. Abawi had guided a nurse into a bathroom and made unwanted and inappropriate sexual advances in trying to hug and kiss her. He made inappropriate remarks in asking her if she was interested in having an affair. The parties made a joint submission that included a 4-month suspension, which was accepted by the Committee.

39. In *College of Physicians and Surgeons of Ontario v McInnis*, 2013 ONCPSD 32, Dr. McInnis made repeated flirtatious comments to a nurse with respect to her physical appearance. On another occasion, he placed his left hand behind her back and leaning in towards her, attempted to kiss her. Despite being rebuffed, he put his left arm around her back, pulling her towards him and kissing her on the left cheek. The parties made a joint submission that included a 2-month suspension and terms, conditions and limitations including monitoring and psychotherapy.

40. In *College of Physicians and Surgeons of Ontario v Carll,* 2012 ONCPSD 29, Dr. Carll had repeatedly verbally and physically abused six nurses over a period of 10 years. The Discipline Committee imposed a 12-month suspension, six-months of which was to be suspended if Dr. Carll successfully completed the College's boundaries course.

41. In *College of Physicians and Surgeons of Ontario v Bhatt*, 2016 ONCPSD 10, Dr. Bhatt had been rude and verbally abusive to nurses over a period of six years. The parties proposed a 4-month suspension which was accepted by the Committee.

42. In *College of Physicians and Surgeons of Ontario v Podell*, 2017 ONCPSD 4, Dr. Podell made inappropriate comments in the presence of colleagues, was not respectful of his fellow workers and was disruptive to the surgical team. In conduct that persisted over 6 years, he admitted his wrongdoing and accepted responsibility for his conduct. The parties proposed a 3-month suspension that was accepted by the Committee.

43. In *College of Physicians and Surgeons of Ontario v Saunders,* 2008 ONCPSD 18, Dr. Saunders had grabbed a registered nurse around the waist, knocking the wind out of her and commenting that she "had love bites before". He admitted his behaviour, sought physiatrist treatment and took the boundaries course. The parties made a joint submission proposing a reprimand, continued physiatrist treatment and monitoring for 30-months which was accepted by the Committee.

44. None of these cases are exactly the same as the matter before us. Some of the cases involve inappropriate comments only. Others involve repeated conduct over several years. Most of the decisions involved a joint submission by the College and the physician. All of the Ontario decisions included

conditions and restrictions which were not proposed by either the College or Dr. Ezema in this matter. However, the cases provide some guidance as to the appropriate length of a suspension of the right to practice in this type of case. On our analysis, a suspension of the physician's license in the range of 2 to 6 months is appropriate in sexual boundary cases involving fellow employees.

45. In this matter, the evidence of the harm caused to Colleague 'A' and the assault on Colleague 'C', in our opinion, calls for a suspension higher in this range rather than lower. Dr. Ezema's failure to accept responsibility for his conduct leaves doubt about his future compliance with the standards expected of physicians with respect to professional boundaries with workplace colleagues. This too, calls for a suspension higher in the range. In our view, the appropriate disposition of this matter should include a reprimand and a suspension of 4 months from practice.

46. At the time of the disposition hearing, Dr. Ezema was not practicing for reasons other than this matter. Accordingly, the 4 month suspension should begin when he becomes eligible to resume practice.

11. Costs

47. The College has requested that the Hearing Committee order Dr. Ezema to pay costs to the College in the amount of $110,000. We have been provided with an affidavit of Noreen Gaudet with the details of the expenses that have resulted from the investigation and hearing of this matter. The total amount expended is $169,700. Dr. Ezema does not dispute the amount of the actual expenses incurred by the College but argues that no costs should be awarded to the College because of divided success in proving the charges against him and financial losses suffered by Dr. Ezema because of suspensions related to the matter.

48. The *Medical Act*, SNS 2011 c.38, includes the following provisions:

> 54 (1) Where a hearing committee finds professional misconduct, conduct unbecoming, incompetence or incapacity, the committee shall dispose of the matter in accordance with the regulations.
>
> ...
>
> 57 (1) For the purpose of the execution of their duties under this Act, the College or any committee of the College may retain such legal or other assistance as the College or the committee may think necessary or proper.
>
> (2) Where authorized by this Act or the regulations, the costs of such assistance may be included, in whole or in part, as costs ordered by the committee.

49. Section 121 of the *Medical Practitioners Regulations,* N.S. Reg. 18/2015 makes provision for a hearing committee to order costs. Section 121 provides as follows:

> Costs for investigation and hearing
>
> 121 (1) For purposes of this Section, "costs" includes all of the following:
>
> (a) expenses incurred by the College in the investigation of a complaint;
>
> (b) expenses incurred by the College for the activities of an investigation committee and a hearing committee;

(c) expenses incurred for participation in any competence assessment arising from a decision of an investigation committee or a hearing committee;

(d) expenses incurred under subsection 88(4), 99(4) or 110(6);

(e) the College's solicitor and client costs, including disbursements and HST, relating to the investigation and hearing of a complaint, including those of College counsel and counsel for a hearing committee;

(f) fees for retaining a court reporter and preparing transcripts of the proceedings;

(g) travel costs and reasonable expenses of any witnesses, including expert witnesses.

(2) Except when awarded costs under this Section, a respondent is responsible for all expenses incurred in their defence.

(3) If a hearing committee finds professional misconduct, conduct unbecoming the profession, incompetence or incapacity on the part of the respondent, it may order that the respondent pay costs in whole or in part.

(4) If a hearing committee considers that a hearing was not necessary, it may order the College to pay some or all of the respondent's legal costs.

(5) The Registrar may suspend the licence of any respondent who fails to pay the costs within the time ordered until payment is made or satisfactory arrangements for payment are made.

[Emphasis added]

50. Having found professional misconduct, the Hearing Committee has discretion whether to order Dr. Ezema to pay costs, in whole, in part or at all. In deciding whether to order Dr. Ezema to pay costs and determining whether to order him to pay all of the College's costs or part of them, we are required to exercise our discretion in accordance with the purpose and objects of the College as set out in Section 5 of the *Medical Act*. Essentially, our discretion on costs should be exercised in such a manner that the public interest will be served and protected.

51. An order for costs under Section 121 of the *Medical Practitioner Regulations* is not a penalty. The purpose of an order of costs under Section 121 is to appropriately reimburse the College for its expenses for investigation and proving professional misconduct. However, Section 121 provides that an order to pay costs is discretionary and specifically provides that an order to pay costs may be a partial reimbursement. The Hearing Committee must therefore consider whether there are any public interest factors that would deprive the College of reimbursement of some or all of its costs.

52. In this case, we think that the College should be appropriately reimbursed for part of its expenses in proving that Dr. Ezema is guilty of professional misconduct. All of the costs claimed by the College fall under the definition of "costs" found in Section 121 of the *Medical Practitioner Regulations*. The greater part of these costs are legal fees and disbursements and the honoraria

paid to members of the Investigation Committee and the Hearing Committee. We have reviewed the amounts claimed as set out and documented in Noreen Gaudet's affidavit and find that the amounts of the expenses themselves are reasonable and properly fall within the categories included in "costs" in Section 121.

53. The $169,700 in expenses incurred by the College in this matter is high. This is undoubtedly a significant burden to the College. At the same time it is unlikely that Dr. Ezema can easily pay these costs. A close analysis of the expenses of investigating and proving the charges that led to a finding of professional misconduct and consideration of public interest factors leads us to conclude that the order to pay costs should require him to pay costs considerably lower than the actual expenses of the College.

54. It is not in the public interest to require Dr. Ezema to reimburse to College for its expenses as to the investigation and hearing of the charge that we have dismissed. We have assessed the degree to which the College was successful in establishing professional misconduct. The College was successful in both the charges related to Colleague 'A' and Colleague 'C', but was not successful in the charge that related to Colleague 'B'.

55. Procedural and preliminary issues accounted for a significant portion of the expenses incurred by the College in this matter. Dr. Ezema brought a Motion relating to pre-hearing disclosure of documents that involved written submissions from the parties, an oral hearing and a written decision by the Committee. He also brought a Motion that the charges against him should be dealt with in separate hearings. This too required written submissions by the parties, an oral hearing and a written decision from the Committee. Dr. Ezema made a Motion that the Chair should recuse himself, which resulted in written submissions from the College and a portion of the time scheduled for the separate hearing Motion to address the question of recusal. All three of these Motions were without merit and were dismissed by the Committee.

56. In view of its partial success in this matter, the College has proposed that instead of its actual expenses of $169,700, the Hearing Committee should order Dr. Ezema to pay costs in the amount of $110,000. This figure provides us with a starting point for our consideration of public interest factors that could reduce the order to pay costs further.

57. College Counsel has referred us to *Jaswal v Newfoundland Medical Board* [1996] N.J. No. 50 (Nfld S.C.-T.D.) where the Court identifies some of the factors that should be considered in these circumstances:

> 50 It is necessary, therefore, to determine the factors appropriate to the proper exercise of the judicial discretion to make an order for payment or partial payment of expenses. In my view, based on the submissions of counsel, the following is a non-exhaustive list of factors which ought to be considered in a given case before deciding to impose an order for payment of expenses:
>
> 1. the degree of success, if any, of the physician in resisting any or all of the charges
>
> 2. the necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing
>
> 3. whether the persons presenting the case against the doctor could reasonably have anticipated the result based upon what they knew prior to the hearing

4. whether those presenting the case against the doctor could reasonably have anticipated the lack of need for certain witnesses or incurring certain expenses in light of what they knew prior to the hearing

5. whether the doctor cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.

6. the financial circumstances of the doctor and the degree to which his financial position has already been affected by other aspects of any penalty that has been imposed.

58. We are also mindful of the comments of the Nova Scotia Court of Appeal in *Creager v. Provincial Medial Board of Nova Scotia* [2005] N.S.J. No 32 about reasonableness of a cost award in these circumstances. The Court states as follows:

> 95 I agree with the comments of the Saskatchewan Court of Appeal. The reasonableness standard of review permits consideration of whether the quantum of costs would be so excessive as to deny the accused person a fair opportunity to dispute the allegations of professional misconduct.
>
> 96 The reasonableness standard might also involve consideration of whether the costs award is so exorbitant that it would effectively bar the complainant from practice, contrary to the Committee's express dispositive sanction...

12. *Jaswal* Factors

59. On balance, we have determined that the application of the *Jaswal* factors should lead to some reduction in the costs of the College in this case based on the following considerations:

a) *"The degree of success if any, of the physician in resisting any or all of the charges":* We have already taken this factor into account by starting consideration at two thirds of the College's actual expenses reflecting the dismissal of the charge related to Colleague 'B';

b) *"The necessity for calling all of the witnesses who gave evidence or for incurring other expenses associated with the hearing":* All of the witnesses called by the College provided relevant evidence which led to findings of professional misconduct. This factor would not result in reducing the amount of costs;

c) *"Whether the persons presenting the case against the doctor could reasonably have anticipated the result based upon what they know prior to the hearing":* Having eliminated the expenses incurred by the College where the decision went against it, we see no basis to further reduce the order to pay costs due to this factor;

d) *"Whether those presenting the case against the doctor could reasonably have anticipated the lack of need for certain witnesses or incurring certain expenses in light of what they know prior to the hearing":* Here again this factor would not further reduce an order to pay costs. The College called

only relevant evidence from witnesses directly involved in the issues before the Committee.

e) *"Whether the doctor cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.":* In this case Dr. Ezema cooperated with the College throughout and the order to pay costs should reflect that cooperation; and,

f) *"The financial circumstances of the doctor and the degree to which his financial position has already been affected by the other aspects of any penalty that has been imposed":* Although not directly related to the expenses of the College in proving its charges against Dr. Ezema, in April 2015, Dr. Ezema's privileges were suspended after Dr. Ezema was charged with common assault of College 'C'. The suspension of privileges led to the College holding Dr. Ezema's license in abeyance. Dr. Ezema was out of practice for approximately 4 months and did not return to practice until August 2015. During this period of time, he suffered a significant loss of income.

In March 2016 the Investigation Committee imposed an interim restriction on Dr. Ezema's license so that all patient encounters were required to take place in the presence of a chaperone. This restriction remained in place for approximately 4 months and Dr. Ezema was not able to see patients because arranging for a chaperone was not possible. This decision by the Investigation Committee was based on a report that suggested he was a risk to patients. Upon investigation this was found to be untrue.

At the time of the disposition hearing in January 2018, Dr. Ezema did not have a license to practice because of a failure to qualify for his license that was unrelated to this matter. At least at that time, his financial circumstances were difficult.

To a certain extent, therefore, Dr. Ezema's financial circumstances have already been affected by the events giving rise to the charges and the investigation of those events. This factor points to a reduction in the amount of costs that Dr. Ezema should pay the College.

13. *Creager* Factors

60. We accept that it would be inappropriate for the Committee to impose an order to pay large amount of costs as a pre-condition for reinstatement of Dr. Ezema's license. Given what we know about his financial circumstances, that would likely amount to a "back-door revocation". Such an outcome would not result if Dr. Ezema were permitted to pay the costs of the College over a period of time after the reinstatement of his license, provided that the monthly amount was reasonably achievable on a physician's income.

61. We also accept that a large order to pay costs could deter a physician from contesting charges of professional misconduct or professional incompetence and force them to accept an otherwise unacceptable settlement agreement as the best alternative to a potential ruinous order to pay costs. In our view, the potential of a cost award should influence a member to make proper admissions and to refrain from making numerous procedural objections lacking merit. However,

it should not prevent a physician from defending themselves against charges that the physician does not accept as warranted.

62. In this matter, the expenses of the College were increased as a result of the Motions brought by Dr. Ezema. The hearing of the evidence was quite efficient, but unnecessary time and expense was incurred in dealing with Dr. Ezema's Motions which lacked merit.

63. Considering all of these factors, the Hearing Committee concludes that the public interest is consistent with some reduction of the costs that Dr. Ezema should pay in this matter. The only factor which clearly supports a reduction in costs is Dr. Ezema's financial circumstances and the degree to which his financial position has already been affected by other aspects of the matters giving rise to the charges against him. To some degree, the recognition of this factor is counter-balanced by the additional expense of the proceeding as a result of Dr. Ezema's Motions that were found to be without merit. At the same time, we have to take into account the potential of a substantial cost award in this case to unfairly influence other members in future cases.

64. Accordingly, the Hearing Committee orders Dr. Ezema to pay $75,000 towards the expenses of the College in this matter. Further, we order that Dr. Ezema be permitted to pay those costs at a reasonable rate per month, starting at the end of the month in which his license is reinstated until the balance of the Order for costs is paid in full. If there is any dispute between Dr. Ezema and the College as to the amount of the monthly payment or if Dr. Ezema has not returned to practice within one year of this decision, the Hearing Committee reserves jurisdiction to determine the monthly amount or, if necessary, the date by which he must pay the College's costs in full.

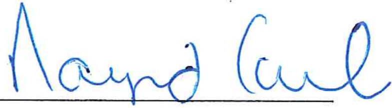
14. Summary of Disposition

65. In summary, the Hearing Committee has determined, pursuant to Section 121 of the *Medical Practitioners Regulations,* that:

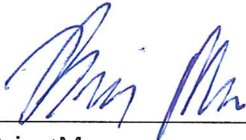
1. Dr. Enyinnaya Ezema is reprimanded and his license to practice medicine is suspended for a period of 4 months for professional misconduct. At the date of the disposition hearing, Dr. Ezema was not permitted to practice for reasons unrelated to this matter, but related to his eligibility to be licensed. In the event that he remains out of practice at the date of this Order, the period of suspension shall begin on the date that he becomes eligible to resume practice or, if he has returned to practice since the disposition hearing, the period of suspension should begin immediately.
2. Dr. Ezema shall pay costs to the College in the amount of $75,000. Dr. Ezema shall be permitted to pay those costs at a reasonable rate per month, starting at the end of the month in which his license is reinstated until the balance of the Order for costs is paid in full. If there is any dispute between Dr. Ezema and the College as to the amount of the monthly payment or if Dr. Ezema has not returned to practice within one year of this decision, the Hearing Committee reserves jurisdiction to determine the monthly amount or, if necessary, the date by which he must pay the College's costs in full.

3. The Hearing Committee retains jurisdiction on any matter arising from the implementation of this Order.

Dated at Halifax, Nova Scotia this 3rd day of July, 2018.



Raymond F. Larkin, Q.C., Chair



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Ms. Gwen Haliburton