

DECISION REGARDING DISPOSITION

The Hearing Committee resumed the Hearing on July 19, 2008 to hear further evidence and submissions from the parties to determine:

- A. The disposition of the matter as a result of their findings of professional misconduct contained in their Decision dated June 10, 2008; and
- B. The award of costs, if any, in this proceeding.

Dr. Andrea Hunt continued to chair the Committee and Dr. Brad Lohrenz was in attendance for the Hearing. Ms. Linda Hefler joined the proceeding by telephone and was present on the telephone for all evidence and submissions. It was agreed that the Committee would not make any decision in the matter until Ms. Hefler had been provided with a copy of the full transcript of the proceeding and copies of all exhibits introduced on July 19, 2008. The Committee followed this agreement and has made this decision following discussions with all Committee members after receipt and review of the transcript and all exhibits.

During the hearing process, Dr. LaPierre called one of his employees to give evidence on his behalf. The employee confirmed that she is present for treatments provided by Dr. LaPierre and acts in an observer capacity. This role has been in place since April, 2007. The employee spoke in positive terms about the treatments provided by Dr. LaPierre to his patients.

In addition to calling this witness, Dr. LaPierre also introduced a letter from this witness, a copy of a previous decision of the Hearing Committee of the College from December, 2007, a letter from Dr. LaPierre's wife regarding his drop in income from 2007 to 2008, and a series of several letters from patients who wrote positively regarding the services provided to them by Dr. LaPierre.

The College provided an Affidavit respecting the costs incurred to date in the proceeding, which amounted to \$29,156.82, and referenced Decisions from other Chiropractic Colleges outside of Nova Scotia.

THE POSITION OF THE COLLEGE

In his submissions to the Hearing Committee, Mr. Shatford emphasized the importance of the protection of the public as the uppermost consideration in determining the disposition of this matter. He also noted that factors such as specific deterrence of Dr. LaPierre, general deterrence to other members of the profession, ensuring the public is aware that this type of misconduct is not acceptable in the profession, and rehabilitation of the member, need to be taken into account as well.

Mr. Shatford advised the Hearing Committee of a prior Decision of the College dated December 1, 2007, where the Hearing Committee accepted a Settlement Agreement from Dr. LaPierre. In this Settlement Agreement Dr. LaPierre responded to a complaint that he had engaged in inappropriate touching of a female patient. Dr. LaPierre denied any inappropriate touching but acknowledged that he failed to communicate properly with this patient and that he took “responsibility for the appearance of unconcern and lack of communication”. He acknowledged this constituted professional misconduct. The Settlement Agreement provided that Dr. LaPierre would be reprimanded for his professional misconduct and have restrictions placed on his license. One of these restrictions required him to have an observer in place during all clinical interactions with female patients, for a period of two years.

The matters that are the subject of the complaints in this present case all predate the matter giving rise to the 2007 Settlement Agreement.

Mr. Shatford referenced cases from Ontario to provide guidance to the Committee regarding the appropriate disposition and advised that the College was seeking the following:

1. Suspension of Dr. LaPierre’s license for a period of one year (which could be served by a series of shorter suspensions)
2. Completion of the continuing education required by the College;
3. Continuation of psychological counseling;
4. Participation in sensitivity training to be approved by the College;
5. Following the lifting of the suspension of his license, participation in Peer Assessment within 90 days of reinstatement, the continuation of the observer requirement for female patients, and completion of the Practitioner Assessment Exam.

Mr. Shatford advised that these recommendations reflected an appropriate balancing of the public interest and the remediation of Dr. LaPierre.

Regarding costs, Mr. Shatford advised that the College was seeking full reimbursement of the \$29,156.82 set out in the Affidavit, which reflected the full costs incurred to date, but did not include anticipated costs of completing the proceeding.

THE POSITION OF DR. LAPIERRE

On behalf of Dr. LaPierre, Mr. Manning reviewed the findings of the Committee and submitted that two of the findings were at the lowest end of the scale of sexual misconduct. He noted that Dr. LaPierre had no sexual intent, and that the acts were not acts of sexual aggression. He submitted that the lack of care exhibited by Dr. LaPierre could be addressed through remediation, and that Dr. LaPierre had been sufficiently penalized already. He referenced the public humiliation of Dr. LaPierre through the publication of information surrounding the complaints.

Mr. Manning advised that if there were a suspension of Dr. LaPierre's license, he would have no ability to work or to pay costs, and that the treatment of his patients would be interrupted. He suggested that the cases referenced by Mr. Shatford bore no similarity to the present case.

Mr. Manning recommended:

1. Dr. LaPierre be reprimanded;
2. The conditions from the December 2007 Settlement Agreement be continued;
3. Dr. LaPierre should take such educational courses as recommended by the Hearing Committee.

He asked the Committee to consider that two of the complaints were more than 20 years old; two of the findings were very low on the scale of misconduct; Dr. LaPierre has implemented changes in his practice; he has strong support from a large number of patients; and that he has suffered already both financially and through the publicity of this proceeding.

Regarding the issue of costs, Mr. Manning noted that one charge had been dismissed, and that parts of other charges were not proven. He noted that Dr. LaPierre had done nothing to increase the costs incurred in the case and without recommending a specific dollar amount, he requested that Dr. LaPierre be given sufficient time to pay any costs award.

DECISION OF HEARING COMMITTEE

The Committee assessed the information presented; keeping in mind that public safety is of paramount importance. Individuals who seek chiropractic care are entitled to rely upon high standards of professional conduct from their chiropractor. This committee believes that professional misconduct must be appropriately deterred. The deficiencies exhibited by Dr. LaPierre although serious do not present a threat to the safety of the public. The Committee also believes that the conduct here does not warrant revocation of his license in order to protect the public interest. If the public can be properly reassured that Dr. LaPierre will not likely repeat the pattern of carelessness identified in the Committee's earlier findings, he should keep his license to practice, albeit with restrictions. While professional misconduct could justify revocation in some circumstances, revocation is not appropriate if other measures such as conditions of license, and re-education have a reasonable chance of success.

It is the belief of this Hearing Committee that before Dr. LaPierre can fully correct his deficiencies he must have sufficient insight into his conduct, and an appropriate attitude to recognize those deficiencies. Therefore, our decision reflects several conditions and restrictions that The Committee believes are sufficient to ensure public safety.

The Committee emphasizes that although it recognizes the wrongful actions of Dr. LaPierre, it did not find his actions were committed with sexual intent. The Committee felt that he was unaware of the full effect of his actions. Dr. LaPierre seems oblivious to the fact that his actions are inappropriate and caused these women emotional stress and humiliation. The Committee

hopes that this hearing and the resulting penalties and conditions on his license will serve to make him aware of the full effect of his actions and ensure similar cases will not arise. That said, the Committee is aware that Dr. LaPierre practiced in his previous mode and method for many years. The Committee hopes that all of Dr. LaPierre's patients can feel more at ease and feel assured that the Committee has instituted conditions that will significantly decrease the opportunity for future cases to arise. The Committee trusts that Dr. LaPierre will abide by the conditions placed on him that he has learned a lesson by going through these proceedings, and he will once again strive to help and not harm the people of Nova Scotia.

The Committee orders the following:

1. Dr. LaPierre is reprimanded for his professional misconduct. This reprimand shall stay on Dr. LaPierre's records at the College and is reportable to other jurisdictions in the event he applies for a license in any other jurisdiction;
2. The continuation of the requirement for a female observer to be present during the assessment and treatment of every female patient under Dr. LaPierre's care, with the following provisos:
 - The observer requirement is to continue for a period of 5 years from this decision;
 - The observer is not to be a family member or close personal or family friend;
 - In order for the observer to understand the reasons why they are in place they are to read and sign the attached statement prior to commencing as an observer, and return it to the NSCC Registrar (see Appendix A);
 - The observer is to initial the file entry for each patient and the time they observe;
 - The observer is to submit a weekly sheet to the NSCC Registrar including the following: date/time of assessment/treatment observation, patient's initials (no names);
 - The observer must also initial each treatment record in the patient's file. This is to give the NSCC a better opportunity to monitor the undertaking and completion of this task;
 - On a semi-annual basis, continuing for a period of 5 years from the date of this decision, an individual appointed by the College will select weekly observer sheets at random, and visit the office of Dr. LaPierre to view the files and verify the observer's initials. Costs of these visits shall be borne by Dr. LaPierre.
3. Dr. LaPierre is to complete training on interpersonal skills and non verbal communication skills for professionals by the end of 2009. The person or persons conducting such training(preferably a psychologist) shall submit an outline of the proposed training to the Hearing Committee for its approval, and shall submit a report to the Committee reporting on Dr. LaPierre's participation in such training once it is complete. The training must involve role playing for the doctor and cover topics such as appropriate body language and recognition of hand and body placement and positioning. The Committee strongly recommends that Dr. LaPierre modify his techniques to avoid using any anterior chest contacts or contacts in the proximity of other sexually sensitive areas. The Hearing Committee retains jurisdiction over this matter pending completion by Dr. LaPierre of the requirements of this paragraph.

4. Dr. LaPierre shall pay in a fine in the amount of \$ 2500.00 payable to the College prior to December 31, 2008. It is intended that the College use these funds to conduct a workshop on the College's sexual misconduct policy, and when such workshop is conducted, Dr. LaPierre is required to attend.

Regarding the issue of costs, the Committee orders that Dr. LaPierre pay the sum of \$23,500, which is an amount less than 75% of the total costs incurred by the College. This amount reflects a balancing of relevant factors in determining costs, some of which are set out in the case of *Jaswal v Medical Board (Newfoundland)* (1996) N.J. No. 50 (Nfld.S.C.T.D.) The amount of \$23,500 may be paid in full on receipt of this Decision, or may be paid in four installments of \$5,000 each, due March 31, 2009, September 30, 2009, March 31, 2010, September 30, 2010, and a final payment of \$3,500 due March 31, 2011.

DATED AT _____ Nova Scotia, this _____ day of September, 2008.

Dr. Andrea Hunt, Chair, Hearing Committee

Dr. Brad Lohrenz, Hearing Committee Member

Linda Hefler, Public Member, Hearing Committee

APPENIX A – Observer’s Letter of Understanding

I understand the reason I am observing the interactions of Dr. LaPierre with female patients is due to restrictions which were placed on his license due to the hearing process.

The restrictions were placed on his license due to the misunderstanding of interactions between Dr. LaPierre and female patients while perfuming regular adjustments.

I understand I am to initial each patients file and place the time of the visit on the file

I am to send a weekly control sheet to the Registrar showing each day of the week, how many female patients were treated each day (patient initials only, not names), and the times of the visits.

DATED AT _____ Nova Scotia, this _____ day of _____, 20____.

Print observer’s name

Signature of observer

Print name of witness

Signature of witness

DECISION

PRELIMINARY MATTERS

This Hearing Committee was appointed to hear evidence in relation to the matter of four complaints against Dr. Phillip LaPierre, the particulars of which are outlined in the Notice of Hearing, attached as Schedule "A" to this Decision

The Hearing commenced on April 19, 2008 at 9:30 a.m. At that time, pursuant to the provisions of the *Chiropractic Act*, s.58, legal counsel for the College, Douglas B. Shatford, Q.C., requested on behalf of the complainants that a publication ban be imposed on the names of the complainants and any information that could identify them. Mr. Manning had no objection to this and the Committee ruled that such publication bans shall be in place.

The parties also raised the issue of how the hearing would be conducted. In particular, Mr. Manning on behalf of Dr. LaPierre requested that each complaint in the Notice of Hearing be dealt with separately, whereby the Hearing Committee would hear the evidence of the complainant and the evidence of Dr. LaPierre with respect to one allegation, and would then render a decision on such allegation before proceeding to hear any evidence on the next allegation. Each allegation would be dealt with similarly in turn.

The College consented to the application for severance and agreed with this approach. The Hearing Committee retired to consider this request, and determined that the procedure as proposed by the parties would not be allowed. Instead, the Hearing Committee suggested to the parties that one of two methods of procedure would be acceptable to it:

1. The College would present all of its witnesses, who would be subject to direct and cross-examination. This would be followed by Dr. LaPierre presenting his witnesses, who would be subject to direct and cross-examination, and it would only be at the end of the full evidence that the Panel would issue any decision on the merits of the case. This is the more usual form of proceeding in a case of this nature;

Or

2. Given the request of the parties to complete the evidence on each allegation in its entirety, the parties would be given the opportunity to have the College call its witnesses for direct and cross-examination, on a particular allegation. At the end of the witnesses with respect to each allegation, Dr. LaPierre could then choose to present his evidence with respect to that particular allegation, without hearing the evidence respecting each of the remaining allegations. If this approach were to be taken, the Committee would again reserve its decision on each allegation until the totality of the evidence had been presented on all allegations.

The parties agreed to proceed with the second option, as a result of which it was ordered that the College would present its evidence with respect to each allegation, followed by Dr. LaPierre presenting his evidence with respect to each allegation, before evidence on subsequent allegations would be heard.

It was noted that Mr. Manning was unable to represent Dr. LaPierre with respect to allegation # 2, and Dr. LaPierre would be representing himself with respect to this particular allegation, which would be heard after all evidence on the remaining three allegations had been submitted.

Finally, after the conclusion of the Hearing on April 19, the Hearing Committee was provided with correspondence from Mr. Manning, whereby he sought to have introduced in evidence a document entitled "Positional Release Techniques" which had been referenced during the hearing. Mr. Manning also sought to introduce several "reference letters", largely from former patients of Dr. LaPierre providing comments with respect to Dr. LaPierre's character and practices. None of these letters related to the particular matters involving the four complainants from this hearing.

Mr. Shatford, on behalf of the College, agreed to the admission of the "Positional Release Techniques" document, but objected to the introduction of the "reference letters" on the basis that:

1. The hearing had been completed and the Panel should not be given more evidence after the close of the hearing;
2. The letters are hearsay; no notice was given of the intention to introduce them, and no opportunity was provided to examine or cross-examine any of the "authors"; and
3. The letters go to character and not to the evidence of the complaints.

Mr. Manning provided a written response to Mr. Shatford's objections.

After considering the positions of both parties, the Panel agreed to allow the introduction of the "Positional Release Techniques" document, but declined to allow the introduction of the "reference letters". The Panel believed that the "reference letters" were neither relevant nor necessary for the disposition of the matters before it at this stage of the hearing process.

BACKGROUND

Evidence was presented to show that Dr. LaPierre had been registered as a doctor of chiropractic in Nova Scotia since January 1, 1980. He conducts his practice at 521 Main Street, Kentville, Nova Scotia under the name "Back and Neck Pain Relief Centre".

The Notice of Hearing in this matter alleging four separate allegations of professional misconduct was issued by the Nova Scotia College of Chiropractors on February 4, 2008. The Notice of Hearing is attached as Schedule "A".

Each of the four complaints will be dealt with separately below.

COMPLAINT #1

Complaint # 1 reads as follows in the Notice of Hearing:

That Dr. Phillip LaPierre, being a Registered Chiropractor is alleged that while providing chiropractic care to a patient "AA" in a period from 1983 to 1986, repeatedly engaged in acts of sexual misconduct by performing an unwarranted examination of a female patient's breasts and further by touching or massaging the breast of a female patient in a sexualized or inappropriate manner and further and other acts of sexual impropriety including making inappropriate gestures that were sexually demeaning to the patient such as laying on top of the patient.

The Committee heard evidence from Patient "AA" where she advised that she was a patient of Dr. LaPierre between the years 1983 to 1987, when she was between the ages of 15 and 19.

Patient "AA" described that she had suffered from migraines and headaches and was seeing Dr. LaPierre for treatment of these ailments. She described the procedure of going to Dr. LaPierre's office where she was instructed to take off her bra and put on a robe, following which she would sit on the stool where he would conduct a procedure. The procedure would involve him sitting behind her and putting his arms around her ribs during which she described Dr. LaPierre as squeezing and touching, and sometimes cupping her breasts.

Patient "AA" also spoke of Dr. LaPierre's head being close to hers when he was behind her on the stool, at which time he spoke very softly to her. She could not recall what Dr. LaPierre said and described a "buzzing" in her ears where she just wanted him to let her go. She advises she never said anything to him during these occasions.

Patient "AA" also described occasions when she was asked by Dr. LaPierre to lie on her back and to remove one arm from her Johnny shirt, exposing one breast. Patient "AA" found this very traumatic. She described Dr. LaPierre putting a rubber device over his thumb following which he applied pressure on the sternum area with his thumb. Patient "AA" also described Dr. LaPierre rolling over and putting his body weight on her from her head to her waist, where his head would be up near her head.

When cross-examined, Patient "AA" noted that the treatment where Dr. LaPierre was sitting behind her on the stool happened on every visit, while the treatment where she would lay on her back only happened toward the latter period of her treatment. She described that with respect to Dr. LaPierre laying on her, that this lasted for approximately two seconds, and Dr. LaPierre would then repeat it on the other side of her body. She did not recall any explanation for any treatment provided by Dr. LaPierre.

Dr. LaPierre gave evidence that he had a partial recollection of Patient "AA" and her visits and noted that she first came to see him for treatment of headaches, and she also had cramps in her right lateral tricep. He indicated that she had 33 visits with him between 1983 and 1987, during which he provided articulated manipulation treatment. This treatment required him to use a stool to sit behind the patient, where he would identify the area of restriction and then he would feel the

ribcage next to the spine. If there was a restriction he would then have to feel the front part of the patient's body to address it.

With respect to speaking to Patient "AA", Dr. LaPierre noted that he always spoke softly and did not recall saying anything inappropriate.

With respect to the procedure used when Patient "AA" was lying on the table, he described his use of the "Zindler" technique where he would use the thumb of one hand and the thumb of his other hand to place pressure on the sternum.

Dr. LaPierre gave evidence that he explained why he asked the patient to take her arm out of the Johnny shirt on the first occasion when he used this procedure, but did not explain the purpose on the second and subsequent visits.

He described the technique where he would be on the opposite side of the problem area of the patient and he would apply his weight to the transfer area just for half a second.

Dr. LaPierre denied cupping the breast or squeezing the breast of Patient "AA". He indicated there could be some unrecognized touching of the breast area however when doing the "Zindler" technique.

On cross-examination of Dr. LaPierre, he gave evidence that Patient "AA" did not at any time express any discomfort with her visits with him. He also noted that he did not do anything differently given that she was a teenager at the time of her visits. Dr. LaPierre gave evidence that he felt that at 15 or 16 she was mature enough.

The Committee reviewed the "Guidelines for the Prevention of Sexual Abuse of Patients", published by the Board of Nova Scotia College of Chiropractors. This document defines the concepts of "sexual impropriety", "sexual misconduct" and "sexual violation".

These terms as defined in the *Guidelines* are as follows:

"Sexual impropriety" is defined as any behaviors, gestures or expressions that are seductive or sexually demeaning to a patient. This may include but is not limited to:

- Inappropriate gowning practices that reflect a lack of respect for the patient's privacy and is less than reasonably required;
- Inappropriate comments about or to the patient, including, but not limited to, making sexual comments about a patient's body or underclothing;
- Making sexualized or sexual comments to a patient;
- Inappropriate comments regarding the patient's sexual performance;
- Requesting details of sexual history or sexual preference in any situation where this is clearly irrelevant or self-gratifying;
- Initiation by the chiropractor of conversation regarding sexual problems, preferences or fantasies of the chiropractor;
- Not receiving explicit consent from the patient to perform an examination of

breasts, genitals and/or anus.

“Sexual misconduct” is defined as “any behaviors, gestures or expressions that are sexually demeaning and inappropriate”. This may include, but is not limited to:

- Performing anal or genital examinations without gloves;
- Performing intra-anal coccygeal adjustments without gloves;
- Unwarranted examination of breasts, genitals or anus;
- Kissing and hugging of a sexual nature;
- Touching or massaging breasts, genitals or any body part in a sexualized or inappropriate manner;
- Conducting an exam, or continuing to examine, the breasts, genitals or anus after the patient has refused or withdrawn consent.

“Sexual violation” is defined as any behavior that violates the patient’s sexual integrity. This may include but is not limited to:

- Sexual intercourse between chiropractor and patient, whether initiated by the patient or the chiropractor;
- Engaging in any conduct with a patient that is sexual, or may be reasonably interpreted as sexual, such as: sexual intercourse, genital to genital contact and encouraging the patient to masturbate in the presence of the chiropractor or masturbation by the chiropractor while the patient is present.

The Committee has concluded that with respect to patient “AA” Dr. LaPierre engaged in an act of sexual misconduct. The Committee finds that Dr. LaPierre did not perform an unwarranted examination of the patient’s breasts. The committee believes it was incidental contact on the breast during normal procedures, and although he did not examine them, he did touch the patient’s breasts in an inappropriate manner. While the Committee does not believe that there was any sexual intention in the actions of Dr. LaPierre, more care should have been taken to avoid contact with the breast. The Committee also believes that the patient felt violated by his procedures and conduct.

The Committee believes due to the age of the patient during treatment, Dr. LaPierre should have taken more time with the patient to explain his procedures and respect that the patient at this point in her life was less comfortable with her body. The Committee believes that Dr. LaPierre failed to do this. A young mind can be more impressionable and as in this case, issues may arise where the patient is unsure of procedures. The Committee believes that Dr. LaPierre should have taken more time and given more explanation to this patient as a result of which his touching of the breasts of this patient was inappropriate.

From Dr. LaPierre’s explanation of the techniques he used with this patient, it is apparent that there was an opportunity for him to be near sensitive regions of the patient. For example, in both the “Zindler” technique as well as the various interior rib procedures, there is contact on the sterno-costal junction. At all times a doctor needs to follow the dictate “first do no harm”. When bearing the skin of a patient, when removing intimate attire, and when approaching regions of the skin

which are usually covered up, the doctor needs to proceed with the utmost care and caution. By failing to stop and explain his movements and procedures on each occasion and obtain the consent of the patient for this purpose, Dr. LaPierre acted inappropriately.

The Committee also notes that the combination of Dr. LaPierre's intent for his adjustment and his focus on his contact hand allowed for a situation where Dr. LaPierre did not realize the placement of the rest of his hand. This resulted in Dr. LaPierre touching the patient's breasts. While the definition of "sexual misconduct" under the Guidelines was not in place at the time Dr. LaPierre saw this patient, the Committee maintains that the expected standard of practice, regardless of whether there were written guidelines, would require Dr. LaPierre to be conscious of the placement of his hands. Dr. LaPierre should have been aware that incidental touch can be just as destructive to some patients as an intended sexual advance. As a result, the Hearing Committee finds that allegation #1 has been proven in that during the period 1982 to 1986 Dr. LaPierre repeatedly engaged in acts of sexual misconduct by touching this patient's breasts in an inappropriate manner. Further, the Committee found that by lying on top of the patient without providing appropriate explanations, this amounted to an act of sexual impropriety that was sexually demeaning to the patient, despite there being no sexual intent on the part of Dr. LaPierre.

COMPLAINT #2

Complaint #2 reads as follows in the Notice of Hearing:

"That Dr. Philip LaPierre, being a Registered Chiropractor is alleged that while providing chiropractic care to a patient "BB" in April 2006, engaged in acts of sexual misconduct by performing an unwarranted examination of a female patient's breasts and further by touching or massaging the breast of a female patient in a sexualized or inappropriate manner."

Patient "BB" gave evidence that her son had been treated by Dr. LaPierre, and when she began experiencing pain in her back that was radiating around her sides she too became a patient of Dr. LaPierre.

She described a visit to Dr. LaPierre in 2006 when her bra was removed, and she was asked to lie down on her back while wearing a Johnny shirt. She described Dr. LaPierre "massaging" her breasts where he pushed into the left nipple and then released it. He then stopped this and went to the outer area of the breast. He then advised her that a rib was out of alignment and asked her to return the next day. Patient "BB" indicated that when she got home that evening she called to cancel the appointment.

Dr. LaPierre gave evidence that he was using the chiropractic technique described as "matrix repatterning". When adjusting this patient, he utilized a contact on the sternum of this patient. It appeared to be a thenar contact on the sternum. The Hearing Committee questioned Dr. LaPierre as to where the rest of his hand was located during the procedure. Dr. LaPierre stated that he was focused on the contact point for the adjustment and did not know where the rest of his hand was located. He stated that it could have been on the breast. The patient remembered only a contact on the breast.

The Committee finds that Dr. LaPierre had no sexual intention in his actions. The Committee believes that Dr. LaPierre nonetheless touched or massaged the breast of this patient in an inappropriate manner, whereby the patient felt violated by his procedures and contact. It is the total actions of the chiropractor that create the adjustment for the person. A doctor must recognize that the touching of the breast, inadvertent or not, significantly affected this patient's experience in his office and her life following the adjustment. Dr. LaPierre failed to understand that when he was working near a sensitive (sexual) region of the patient's body, extra care must be taken not to touch such an area.

Accordingly, the Committee finds that Dr. LaPierre did not perform an unwarranted examination of the breast, but is guilty of inappropriately touching or massaging the breast while performing his "Matrix Repatterning" technique. Consequently, this charge has been proven on the balance of probabilities.

COMPLAINT #3

Complaint #3 reads as follows in the Notice of Hearing:

"That Dr. Philip LaPierre, being a Registered Chiropractor is alleged that while providing chiropractic care to a patient "CC" in a period from 1983 to 1984, repeatedly engaged in acts of sexual misconduct by performing an unwarranted examination of a female patient's breasts and further by touching or massaging the breast of a female patient in a sexualized or inappropriate manner and further and other acts of sexual impropriety including making inappropriate gestures that were sexually demeaning to the patient."

Patient "CC" described that in 1983 she had bad headaches and pain in the top of her neck and down her spine. She was referred by her family physician to Dr. LaPierre.

She testified that she was asked to remove her clothing except her bra and underwear and to put on a Johnny shirt.

Patient "CC" described different visits with Dr. LaPierre, during one of which she was lying on her back and Dr. LaPierre pulled her arms out of the Johnny shirt and began massaging her breasts. When patient "CC" asked him what was he doing he advised that he was giving her a breast examination. Patient "CC" advised that she had a family doctor for this purpose.

Patient "CC" also described various visits when Dr. LaPierre came very close to her, with parts of his body making contact with hers.

On cross-examination, it was brought out that patient "CC" saw Dr. LaPierre for approximately 70 to 80 visits over a period of five years, ending in 1988. Patient "CC" described that she did obtain some relief from Dr. LaPierre over this time.

On cross-examination, patient "CC" described the breast examination as being exactly the same as

the one her family doctor performed.

The patient also described incidents where Dr. LaPierre's hands came in contact with her breasts.

Dr. LaPierre gave evidence that he used a Motion Palpation Examination Station when examining this patient, and he demonstrated the proximity of the doctor to the patient while using this device. He described the placing of his hand on the top part of the patient's breast to show how the muscle in the front can impact the back.

Dr. LaPierre also gave evidence that he believed he did conduct a breast examination during the first visit of this patient as this was his usual practice at the time. He advises that he hasn't conducted breast examinations in about 20 years.

Dr. LaPierre indicated that the treatment he provided to this patient sometimes required him to use a spray which necessitated moving the body mass of the breast out of the way. He describes that when he did this the patient did not say anything to him.

The Hearing Committee carefully considered the evidence of both parties. The Committee respects that some of the details were sketchy and that the complaint was based on situations which occurred approximately 24 to 25 years ago. While the evidence indicates that this patient saw Dr. LaPierre for 70 to 80 visits over a five year span up to September 1988, the charges only refer to a period of between 1983 and 1984.

While it is clear to the Committee the patient felt concern and felt violated with respect to some of the experiences that she had in Dr. LaPierre's office and that Dr. LaPierre could have communicated more to the patient as to what he was doing, the Committee is unable to conclude that the charges involving this patient have been established on a balance of probabilities. As a result, this charge is dismissed.

COMPLAINT #4

Complaint #4 reads as follows in the Notice of Hearing:

“That Dr. Philip LaPierre, being a Registered Chiropractor is alleged that while providing chiropractic care to a patient “DD” in 1987, repeatedly engaged in acts of sexual impropriety including making inappropriate gestures and behaviours that were sexually demeaning to the patient including inappropriate gowning practices that reflected a lack of respect for the patient's privacy, ungowning a patient without consent.”

Patient “DD” described herself as being in her late 30's when she saw Dr. LaPierre in or about 1987. She indicated that when it was time for her appointment she was requested to go to a changing room, remove her bra, and put on a gown and wait for Dr. LaPierre. She indicated she used to count while in the changing room to determine how much time she would need before Dr. LaPierre came to the room. She testified that on one occasion Dr. LaPierre entered the change room without knocking. She testified that she believed Dr. LaPierre was “trying to catch” her. She

indicated her jeans were not removed at that time.

Patient "DD" described various visits with Dr. LaPierre where she was required to lie on the bench and Dr. LaPierre used a spray on her. She believed Dr. LaPierre gave some explanation about this spray but she does not recall what the explanation was.

On cross-examination it was noted that the patient attended a number of visits with Dr. LaPierre with complaints about her left hip, groin and hands. She advised that she did get temporary relief from the visits. While patient "DD" indicated that she had an uneasy feeling during her first visit, she could provide no answer as to why she returned for approximately 29 more visits other than to say that she had been in pain.

During cross-examination patient "DD" testified that she believed Dr. LaPierre's practice in opening the changing room doors was a "game". She reached this conclusion from the tone of voice and the words that he used.

Dr. LaPierre gave evidence that when he first conducted a procedure using the spray on patient "DD" he gave an explanation, but usually didn't repeat explanations for second and subsequent procedures.

Dr. LaPierre admitted that when opening the changing room door, he did not knock or announce his arrival.

After hearing the evidence of both parties the Committee notes some discrepancies in the evidence respecting what occurred in the use of the spray when the patient was lying down. The Hearing Committee is unable to conclude on a balance of probabilities that Dr. LaPierre engaged in acts of sexual impropriety with respect to this aspect of Dr. LaPierre's practice.

The Hearing Committee does find however that Dr. LaPierre opened the change room door without knocking or announcing his visit. The Committee notes that it is an expected standard of practice that a patient has some way of signaling to the doctor when they are ready so that the door can be opened. In lieu of this, the person opening the door should at the very least knock on the door.

The Committee concludes that charge #4 is proven to the extent that Dr. LaPierre inappropriately opened the change room door without announcing his presence in any way. The Committee believes that by engaging in this action, Dr. LaPierre should have been aware of a negative impact on the patient, and that it could be construed as an act of sexual impropriety.

CONCLUSION

The Committee has found that allegation #1, #2 and #4 (in part) have been proven. The Committee dismisses allegation #3.

With respect to its findings arising from these allegations, the Committee concludes that the proven allegations breached the expected standards of practice of a chiropractor and constituted unprofessional conduct amounting to professional misconduct. The Committee took into account all of the circumstances of the matters when reaching this conclusion.

Given this finding of professional misconduct, the Committee now invites the parties to continue the hearing with respect to issues of disposition and cost. The Hearing Committee is prepared to hear from the parties either in writing or verbally.

The Committee requests the two parties to consider whether they wish to make their submissions in writing or verbally, and if no agreement can be reached on this, the Committee directs that verbal submissions shall be heard on a date to be set by the Hearing Committee.

Finally, the Committee notes that with respect to the “reference letters” sought to be introduced by Mr. Manning during this phase of the hearing process, the Committee is prepared to hear from the parties with respect to whether these reference letters may be properly admissible when hearing submissions on disposition and costs.

DATED AT _____ Nova Scotia, this _____ day of June, 2008.

Dr. Andrea Hunt, Chair, Hearing Committee

Dr. Brad Lohrenz, Hearing Committee Member

Linda Hefler, Public Member, Hearing Committee