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## DECISION ON DISPOSITION

1. On January 18, 2008, we determined that Dr. Osif was guilty of charges related to a disciplinary matter that amounted to professional misconduct and professional incompetence. At the request of the parties we reserved jurisdiction to make any further determinations under Section 66 of the *Medical Act*, S.N.S. 1995-96, c. 10. On May 26 and 27, 2008, we conducted a hearing to consider matters of disposition under Section 66 and costs under Section 67 of the *Act*.

### A. THE PARTIES' POSITIONS ON DISPOSITION

2. Ms. Hickey, on behalf of the College, made the submission that there was a range of appropriate dispositions in this case. At one end of the range was revocation of Dr. Osif's licence. At the other end of the range was a disposition that made successful completion of the Family Medicine Residency Program and the Canadian College of Family Physician Certification Examinations in Family Medicine ("the CCFP exams") a pre-condition for her return to practice. Further, if Dr. Osif intended to practice in emergency medicine she should be required to complete the Canadian College of Family Physicians Emergency Medicine Residency Program and pass the exam before returning to emergency room practice.

3. Mr. Donovan, on behalf of Dr. Osif, submitted that Dr. Osif should be permitted to return to practice upon satisfactorily completing a supervised program of an appropriate length (but in the range of one month's duration) at an appropriate location to be approved by the College and upon successful completion of that program to participate in a graduated periodic direct supervision program satisfactory to the College for a period of months. He based this approach on evidence of the Physician Enhancement/Retraining Process that is used in the College of Physicians and Surgeons of Ontario. This process was described to us as follows:

"We assist physicians in developing education plans for many reasons, including a discipline order, a directive from our Quality Assurance Committee and for physicians who want to re-enter practice after a prolonged absence or change their scope of practice. In general, we use the principle of graded supervision for all of these situations. This is a concept that is used in all forms of medical education.

We describe training and re-training in three phases: High Supervision, Low Supervision and Assessment.

In the High Supervision period, the physician works under the direct supervision of someone else. The physician is never the Most Responsible Physician (MRP) and is not able to bill for their services. Essentially they are working at the level of a medical student, where every case and the management plan is reviewed and approved by the supervisor. The length of time for this phase of supervision is variable and flexible. Essentially, once the supervisor(s) are content that the physician is safe to work independently (although still under some supervision), the physician is allowed to enter the next phase of education.

During the stage of low supervision, the physician works independently in their own practice and is the MRP. However there is still a degree of supervision. Initially the supervisor meets with the physician no less than weekly to review documentation and care and to discuss identified learning needs. As the learning needs are met, the frequency of the supervisory visits can decrease. At any time during this phase if there are patient safety concerns identified, the College is notified immediately. The duration for this phase is also variable but almost never less than six months.

During the first two phases an accurate assessment of a physician's abilities and knowledge level can take place. However, it is the practice in Ontario that once the supervision is complete, a College-directed assessment of the physician's practice takes place. This is usually in the form of a PREP™ assessment for family physicians or an assessment from our Specialties Assessment Program for specialists.

Finally, in addition to these activities, it is usually expected that physicians will coincidentally participate in relevant CPD activities to complement the re-training.

Physicians are responsible for all costs, including CPD fees, payment of supervisors for their time in supervision, record reviews, meeting with the physician and reports (currently the CPSO rate is \$137.50 per hour) and the cost of the final assessment.”

4. Mr. Donovan also indicated that it would be appropriate to require Dr. Osif to complete the Record Keeping course provided by Dr. Henry Wu through the College of Physicians and Surgeons of Ontario which she had previously started but was unable to complete because of her suspension pending disposition of these charges. Mr. Donovan also said that it would be appropriate to require Dr. Osif to take a refresher course on ethics and communication from Dr. Abbyann Lynch to continue a process begun by Dr. Osif with Dr. Lynch before the hearing of the charges in this matter. He also indicated that a part of the supervision program should be the

participation of a sponsor or mentor separate from the supervisor of the program; the mentor would be a person who would engage in support of a non-threatening nature and provide advice to Dr. Osif.

5. With respect to the disciplinary penalty aspect of our disposition, Mr. Donovan submitted that a period of suspension in the range of three to six months would be appropriate and it should be considered as already served in light of Dr. Osif's lengthy period of administrative suspension pending disposition of these charges.

6. Mr. Donovan disagreed with Ms. Hickey's submission that Dr. Osif's return to practice be conditional on successfully passing the CCFP exams. Mr. Donovan submitted that such a condition was not reasonable because it is unattainable for Dr. Osif and therefore amounted to revocation of her licence.

## **B. EVIDENCE**

7. In considering disposition, the Committee took into account the evidence that was presented at the hearing of the charges against Dr. Osif which were dealt with in our decision of January 18, 2008. We were also provided with a number of affidavits and agreed documents. The affidavit evidence included an affidavit of Dr. Osif sworn on May 13, 2008, an affidavit of Dr. Cameron Little sworn on May 21, 2008 and the supplementary affidavit of Dr. Osif sworn May 23, 2008 in reply to Dr. Little's affidavit. We also heard evidence from Dr. Vonda Hayes and Dr. Douglas Sinclair.

8. Dr. Vonda Hayes is the Director of Faculty Development in the Department of Family Medicine at Dalhousie University. She also serves as the Director of the Physician Enhancement Program provided by the Faculty of Medicine. The Physician Enhancement Program is a program to address the needs of physicians who are referred by the licensing bodies of New Brunswick, Nova Scotia and Prince Edward Island. These physicians have been identified by their respective licensing bodies as having deficiencies which could be addressed by a learning program. Dr. Hayes testified that the purpose of the Physician Enhancement Program is to develop an individual, personalized program for a physician who has been referred usually by a licensing body where the licensing body has deemed that an education program is the appropriate approach to dealing with identified deficiencies.

9. Dr. Hayes was asked to identify programs that address issues of incompetence of physicians in Nova Scotia. She identified three specific programs – Clinical Traineeships, the Physician Enhancement Program and a Residency Program. A Clinical Traineeship is a program that is designed at the request of a practicing physician to address a very specific area of knowledge or skill development. The program is developed for a practicing physician who wishes to upgrade an area of knowledge or skill. The usual period of a Clinical Traineeship is about one month during which time the physician is supervised with a preceptor or teacher/supervisor who assists the physician to enhance her skill so she goes back into her own practice with increased knowledge or skills.

10. In addition to the Clinical Traineeship Program and the Physician Enhancement Program Dr. Hayes discussed the Family Medicine Residency Program which is a program for medical graduates who wish to receive certification in family medicine and go into full time practice. The Residency Program lasts two years and is designed to increase the knowledge and skills of graduates to allow them to practice comprehensive family medicine. Initially the first year residents are supervised on a one-to-one basis in order to get an accurate assessment of their knowledge and skills and abilities and then they are allowed a graduated responsibility so that by the end of their second year they are working independently with supervisors available to them.

11. Dr. Hayes testified in her direct examination that the Clinical Traineeship Program would not be suitable to address the issues of Dr. Osif's incompetence identified in the Committee's decision. In her view, the number of deficiencies that had been identified and the scope, the breadth and the depth of the deficiencies could not be remedied by a Clinical Traineeship which is very focused on a specific skill or knowledge needed by a physician. She also expressed her opinion that the Physician Enhancement Program would not be appropriate to address incompetence issues identified in the Committee's decision. She told the Committee that the number, the scope and breadth and the depth of the deficiencies identified by the Committee would be overwhelming for the Physician Enhancement Program, and that she could not conceive a program that would adequately address the issues identified by the Committee.

12. Dr. Hayes also said that it would be very difficult to address those deficiencies within the Family Medicine Program because of the amount of supervision and resources that would be required to address Dr. Osif's deficiencies. She stressed that in order for Dr. Osif to be successful in any of these programs it is important that she have the insight necessary to judge what she does not know and to identify her ability to acquire the necessary skills. She said that without insight into having deficiencies it is very difficult to address them. It appeared to her that Dr. Osif lacked the necessary insight.

13. On cross-examination Dr. Hayes was provided with a report from Dr. Abbyann Lynch whom she acknowledged was recognized as having expertise in the field of medical ethics and communication. From her review of Dr. Lynch's report, Dr. Hayes acknowledged that contacting Dr. Lynch was a positive sign which manifested insight and motivation which were the qualities

she wanted to see in a candidate for any of the programs she had identified. She was also referred to Dr. Osif's affidavit and agreed that Dr. Osif's indication about wanting closer working relationships in order to improve was a positive sign.

14. Mr. Donovan referred Dr. Hayes to a number of other materials from the evidence including the reports from Dr. Ross and Dr. Field and she agreed with his suggestion that these made her more optimistic about Dr. Osif's potential for remediation. She also agreed that Dr. Osif had made steps in the right direction and the results were positive in terms of willingness, insight, motivation and partial awareness of the issues in remedying her deficiencies. She was asked whether, if the College ordered a remedial program, she would be willing to sit down and try to design it appropriately to give it a chance of success and to staff it with appropriate mentors and supervising doctors. She replied that she would have to give it significantly more thought than she had the opportunity to do but she was more optimistic than she had been initially.

15. Dr. Douglas Sinclair is the Chief of Emergency Medicine at the IWK Health Centre and the Associate Dean of Continuing Medical Education at Dalhousie University. Dr. Sinclair testified that the College of Family Physicians of Canada has a one year program of special competency in emergency medicine after completion of a Family Medicine Residency and the CCFP exams. A limited number of applicants are admitted to the Residency Program. Physicians who are in practice and would like to get further training in emergency medicine and who have been successful in the CCFP exams are also qualified to enter the program. In Dr. Sinclair's opinion the one year program is not "robust enough to provide the remediation needed for the deficiencies identified in the Hearing Committee's decision". He said that the program is not designed for physicians who have been in practice for a long time with specific issues that need to be remedied.

16. Dr. Osif gave her evidence by affidavit and took questions from the members of the Hearing Committee. In her affidavit dated May 13, 2008, she indicated that she had participated in continuing medical education throughout her career and practice and had made a commitment to life long learning and to keeping current with medical issues and progress. She provided the Committee with a list of the continuing medical education and recertification programs that she

has taken since she was suspended by the College so that she would be able to return to practice fully prepared and up to date. This included 16 separate programs since February, 2006.

17. Dr. Osif also indicated that she had engaged in an individualized program called “Medical Ethics and Informed Consent” given by Dr. Abbyann Lynch, Director of the Bioethics Department at the Hospital for Sick Children in Toronto, Ontario. Dr. Osif met with Dr. Lynch on September 20, 2007 who reported that “...a large part of the difficulty seems to me to arise from her self-isolation and the fact that she is having continuing difficulty in adapting to the culture around her...”. In the session with Dr. Osif, Dr. Lynch reviewed issues of communications with patients, the importance to recognizing one’s own limitations as well as the importance of involving colleagues for referral when that is appropriate. Dr. Lynch acknowledged Dr. Osif’s agreement with her about these matters but indicated: “...that it seemed to me she had some greater trouble in the practice”. Dr. Lynch stated as follows:

“...evidently, she has somehow isolated herself in the work she does in the terms of her chosen hours in Emerg (nights only, Saturdays, etc.) so that collegial interaction with her peers may have suffered. While she professed that she herself had chosen to make this situation, she will need help to understand what she is missing by way of needed feedback from her peers...”

18. Dr. Lynch’s report also recounts her discussion with Dr. Osif on the “...moral values implicit in the practice of medicine...” In this respect, Dr. Lynch made the following comment:

“...The issue addressed: the importance of self-reflection, self-awareness as the basis of moral behavior. Again, Dr. Osif seemed to be saying that she knew about this, and certainly agreed with it, at least in theory. Implementing the theory had not always been achieved in her experience...”

19. With respect to “physician self-awareness” Dr. Lynch indicated that Dr. Osif “.... might benefit from assistance in trying to adapt further what she’s learned in her previous social experience to present conditions. It’s clear that she is trying to do so but needs help in finding appropriate ways of achieving this...”.

20. Dr. Lynch wrote further on “self-awareness” as follows:

“We spent some little time on the matter of “lying” in an effort to touch again on the matter of self-realization. The issue was not the matter of lying to others, but rather, the matter of self-realization, and how better awareness of self might assist in better patient management. In that way, we reviewed how parents might come *to distrust their physician, and thus distrust the profession. Once again the*

*attempt* was to help Dr. Osif see her position vis-à-vis the others, not only to her own values and experience. My sense is that for her to achieve this realization will require assistance and practice”. [Emphasis in the original]

21. Dr. Lynch concluded her report with the following assessment:

“We concluded our discussion with attention once more to the matter of ‘self-reflection’, this time as one way ‘to overcome the isolating effects of medical practice upon its practitioners’. With the assistance of some kind of mentor, physicians (and others) can learn to redirect unproductive ways of coping, this to the benefit of patients and colleagues. This view was not so easily accepted by Dr. Osif, but she agreed it could be helpful (for some?). As emphasizing the need for self-reflection, we reviewed again some areas in which her relationships with patients (and colleagues) could be improved.

Overall, my sense is that Dr. Osif not negative to changes in her practice which colleagues might suggest. She seems somewhat overwhelmed by the length of time she has been under pressure, and needs assistance to find positive ways of improving her practice. In this, she is hampered by her own self-isolation in her environment, and by the magnitude of criticism of her activity (or lack of it). Certainly, she seems willing to work as directed, but might benefit from some further gentle collegial effort to bring her to see how her behavior is seen by others.”

22. In paragraph 15 of Dr. Osif’s affidavit, she reflected on Dr. Lynch’s report and indicated that she would be willing to participate in “problem rounds” or departmental meetings to achieve the “gentle collegial effort” Dr. Lynch refers to in her report. She referred to her previous unsuccessful efforts to complete the CCFP exams and in paragraph 6 said “... I have been preparing consistently for the exam over several years because of my unsuccessful attempts to complete it. This requirement to pass the exam had a negative impact on my social and personal life ...”. In paragraph 17 she also said “... due to the fact that I have not successfully completed the CCFP exams, I continue to be on a defined licence and required a sponsor. The status of being on a defined licence imposed a feeling on me of being a less valued member of the physician community...”.

23. In her affidavit Dr. Osif referred to the “early closure” issue which was a significant element in the Hearing Committee’s reasons for finding that she was guilty of professional incompetence. She stated as follows in paragraphs 21 and 22:

21. “In Dr. Ross’s assessment report and accompanying materials, he identified early closure as a potential issue in my practice, as did Dr. Field. This shortcoming of mine may have developed over my time in practice and through experience but it has never been brought to my attention before. Since the Hearing, I have learned that this problem is very common for physicians in my demographic bracket, i.e. my age and experience and practicing in a Level 3 hospital. Attached hereto as Exhibit “AA” is an article from The Medical Post, dated March 27, 2007 entitled, “So You Think You Can Diagnose?”. Dr. Patrick Croskerry is an expert in cognitive errors in critical thinking in Emergency Medicine who recognizes that the pressures inherent in the emergency room can affect the cognitive thinking of physicians. I would likely benefit from some coaching or continuing medical education in this area to help ameliorate this identified weakness.

22. I was not aware that early closure was a problem in my practice prior to this College process. I anticipate that I will be more likely to consider whether early closure has played a role in my diagnoses now that the issue has been brought to my attention. Being aware of the issue should help to prevent me from continuing this practice.”

24. Dr. Osif’s affidavit also indicated that on September 21, 2007, she participated in a course of Medical Record Keeping for physicians put on by Dr. Henry Wu through the College of Physicians and Surgeons of Ontario. Part of the course involved submitting some records for review from the perspective of good record keeping. She was unable to complete this part of the program because of the suspension of her licence pending disposition of these charges.

25. One of the areas addressed both by Dr. Hayes in her evidence and Dr. Osif in her affidavit was Dr. Osif’s unsuccessful attempts to pass the CCFP exams. Dr. Hayes testified that the Certification examination is developed to assess a physician’s ability to go into practice at a basic level of family medicine practice. Success in the CCFP exams is a requirement to obtain a full licence to practice family medicine in Nova Scotia. Dr. Osif testified that when she became aware of the requirement to pass the CCFP certification exams she attempted to do so. Dr. Osif stated in paragraphs 5 and 6 as follows:

“5. In 1998 I became aware of the current CPSNS requirement for licensure, and I have sat for the Canadian College of Family Physicians’ exams several times and have passed (as described in the Decision) each component, both written and oral, on different occasions. My requests of CPSNS to have these results considered as a cumulative pass have been declined. A true copy of my CCFP Exams results for 1999 and 2001 are attached hereto as Exhibit “U”.

6. Based on my personal educational history illustrating how I narrowly missed the criteria for being grandfathered into full licensure, I believe I should be considered for the grandfathered status accorded many other family physicians in Nova Scotia. I believe it would be now be difficult to successfully sit the CCFP Exams. I attach hereto as Exhibit "V" true copy of a listing of physicians in North Sydney and Sydney Mines which illustrates that less than half of the physicians listed have CCFP accreditation, and the other half have received LMCC earlier than 1995."

26. Dr. Osif expanded on this point in response to questions from the Committee. The transcript records the following exchange between Dr. Whynot and Dr. Osif:

**“DR. WHYNOT:** Dr. Osif, in your affidavit one of your comments is that you don't feel that you can pass the CCFP Exams. And I'm wondering if you can tell us why that is.

**A.** Sure. I certainly can explain. There are several physician members here in this room. Now the CCFP examination was part of my professional development for years. And I tried very hard. I studied. I devoted my time for long months over years.

I devoted a lot of effort to this study, not only to pass exam, but for my own satisfaction, to deepen my knowledge, and to provide service for the people, for the patients, and for my own satisfaction as a professional. I tried honestly extremely hard.

Three times I was awarded pass result on the office simulated exams, and fourth time when I devoted again a lot of effort, finally I passed the written part of the exam. And as it was already mentioned, the simulated office exams, there were four satisfactory (stations?) from five, and I received failing results. So for this reason, considering the effort, what I genuinely put into study for the CCFP examination, I am sorry to say I do not have confidence to the results any more. “

27. In a follow-up question to that answer from Ms. Hickey, Dr. Osif said:

**“A.** With all due respect to this process, I am sorry to say that the stress of this repeated examinations for the CCFP year after year, no rest, no peace of mind, just the drill - do the questions, read the book again, another book, another one. Like, and this wasn't separated time over three months to prepare ... (inaudible) exam. Year after year.”

28. Dr. Whynot also asked Dr. Osif about the benefits of her program with Dr. Lynch. The transcript records the following exchange:

**“Q.** I'd like to ask a couple of questions now about the ethics education session that you did with Dr. Lynch. Did you find this particularly useful?

**A.** Well, I was already involved in this process for quite some time and I was looking for answers, how to deal with this process. So I welcomed the opportunity to travel to Ontario to meet with Dr. Abby Lynch who is grandmother of the ethics in this country. So it was most rewarding experience for myself as well, just to have opportunity to see this professional, and to put forward my own case.

**Q.** Can you give me an example?

**A.** I probably didn't get quite the focused question, what you ask.

**Q.** Well, actually I asked about an example situation of when you might need to do self-reflection during your professional activity.

**A.** Well, as I said, like, to incorporate the ... (inaudible) daily.”

29. Dr. Whynot also asked Dr. Osif about the issue of early closure. Their exchange included the following:

**“Q.** One of the problems that have been identified through the process is the issue of early closure, and you addressed that in your affidavit. And you talk about the articles that are contained in your affidavit. I'm wondering, what do you think the best approach to addressing this for you would be?

**A.** Well, as of this process, I am really sorry to say I wasn't aware that some early closure in diagnostic process may exist. Like, through this process, like, I am aware now that this may arise in the clinical practice, so certainly I give myself immediate feedback in every single patient because this is what should be done.”

30. Finally, Dr. Whynot asked Dr. Osif about where she needed to improve. The transcript records the following:

**“Q.** Okay. Now that the Hearing Committee's decision is written and you look back on the process, what are the most important areas that you feel you need to improve on?

**A.** Well, could you please be more specific at what ... because the process was extreme.

**Q.** Okay. Perhaps I can divide that into two areas.

**A.** Yeah.

**Q.** Clinical skills and knowledge perhaps, and professionalism. Is that ... would you ...

**A.** Yeah.

**Q.** Is that a fair division, would you say?

**A.** Yeah.

**Q.** So can you perhaps start with the clinical skill and knowledge.

**A.** Clinical skill and knowledge as to continue on a daily basis to be focused on ... like, on details what you are doing. And professionalism, I will make sure that the other members of the medical profession will understand me properly because I ... sometimes I might not have been quite understood, what I meant, and it might not have been interpreted in the right way.

**Q.** In terms of your clinical skills and knowledge, you've described to us that you've studied a lot on an ongoing basis over time. So is there something different that you need to do to work on those skills?

**A.** Dr. Whynot, I need to relax. I am under such stress so, like, if you go to work and you are under stress, like, as I see it just ... you need to work in peace of mind. Like, I have huge commitment to the profession. This is not the way how I exist, but this is the way how I live. And frequently, there was interference from outside, this ... my commitment to work.

If you look back on the years, there are probably quite a few examples already in these documents. So there was interference which was taking me away from the peaceful, proper way how should I ... how I felt that I should be servicing these people. If we lift this away, I am confident there will not be any more process.

**Q.** If you were to return to an emergency department similar to the one you have practiced or that same emergency department now, do you feel that you would be a safe and competent physician?

**A.** Yeah, ... (inaudible) what I learn in this process, I am confident I will."

31. Dr. Acker asked Dr. Osif about her plans to participate in "problem rounds" as referred to in her affidavit evidence. Their exchange is set out below:

"**Q.** How about you personally? Will you seek out rounds at the regional hospital now?"

A. Oh, yes, yeah. Like, the ... yeah, the situation is a little bit different than a few years ago so I ... yeah, and there were rounds, emergency medicine rounds, but it was restricted to the site chiefs, nursing ... unit nurse ... unit managers, and the chief of emergency medicine. It was not open to any staff.

Q. Would you continue to work nights only from now on?

A. I want to ... Panel and the Members know that when I accepted full-time work in North Sydney Emergency Department in 1997, the night shifts were only position available for me to work in Nova Scotia and in North Sydney Hospital.

We are looking at 12 years. Over these years in return, I adjusted to this type of the work. I adjusted my family life, my private life, my biological clock, the way how I sleep, how I life. And I was getting feedback I was doing fine with it. So I adjusted to work, the back shift and weekends for many years now.

Q. Do you still think that's appropriate? You would like to go back to that?

A. Well, this is the service which is needed there, and this is the service to which I committed 12 years ago. There was no other work available for me in North Sydney, only back shift in North Sydney Emergency Room.”

32. Before the hearing on disposition, the Hearing Committee was hopeful that it would be provided with specific information about options available to Dr. Osif to remedy her deficiencies and to demonstrate that she is qualified and able to fully meet the requirements of a licenced medical practitioner, whether under conditions, limitations or restrictions or otherwise. The evidence of the College essentially indicated that there were no realistic options for Dr. Osif to remedy her deficiencies and to demonstrate her qualifications. The evidence from Dr. Osif suggested that she could remedy her deficiencies and would do so but the specific means of doing so were vague. Nevertheless, we have come to our determination on disposition on the basis of the evidence before us aided by the insight of the three physicians on the Committee.

## C. PRINCIPLES OF DISPOSITION

33. The Hearing Committee's decision on disposition is governed by Section 66(2)(e) of the *Medical Act* which provides as follows:

**66 (2)(e)** A hearing committee ...shall determine whether the member or associate member is guilty of charges relating to a disciplinary matter, and

(i) where there is a guilty finding, may determine that

(A) the registration, licence or specialist's licence, or both, of the member or associate member be revoked, and that member or associate members name be stricken from the registers in which it is entered,

(B) the licence or specialist's licence, or both, of the member or associate member be suspended

(I) for a fixed period, or

(II) for an indefinite period until the occurrence of some specified future event or until compliance with conditions prescribed by the committee,

(C) conditions, limitations or restrictions be imposed on the licence or specialist's licence, or both, of the member or associate member,

(D) the member or associate member undergo such treatment or re-education as the committee considers necessary,

(E) such fine as the committee considers appropriate to a maximum of fifteen thousand dollars be paid by the member or associate member to the College for the purpose of funding medical education and research as determined by the Council,

(F) the member or associate member be reprimanded, and

(G) such other disposition as it considers appropriate be imposed, or

(ii) where there is a not guilty finding, then the Committee may dismiss the charges;

(f) shall file its decision, including reasons, at the offices of the College.

**(3)** When making dispositions pursuant to clause (2)(e), the committee may impose one or more of the penalties which are set out therein, or the

committee may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

34. The exercise of our authority under these provisions must be conducted in such a manner to further the purpose and objects of the *Medical Act* which are set out in subsection 4(3) of the *Act*:

**4(3)** In order that the public interest may be served and protected, the objects of the College are to

(a) regulate the practice of medicine and govern its members in accordance with this *Act* and the regulations;

(b) establish, maintain and develop standards of knowledge and skill among its members;

(c) establish, maintain and develop standards of qualification and practice for the practice of medicine;

(d) establish, maintain and develop standards of professional ethics among its members; and

(e) administer this *Act* and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any *Act*.

35. Obviously, protection of the safety of the public is paramount. Members of the public in Nova Scotia who seek medical treatment are inherently vulnerable and are therefore entitled to rely upon high standards of professional conduct and competence from their treating physician. Having found that Dr. Osif is guilty of professional misconduct and professional incompetence, this Committee believes that any disposition must provide an assurance that misconduct has been appropriately deterred and that the deficiencies demonstrated by Dr. Osif do not present a threat to the safety of members of the public.

36. The principles involved in applying provisions similar to those in the *Medical Act* are well settled. In *McKee v. College of Psychologists of British Columbia*, [1994] 9 W.W.R. 374 at 376, the court stated the proper principles as follows:

“In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has

entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional's peers are better able to assess than a person untrained in the particular professional art or science.<sup>12,13</sup>

37. We were referred to the text of James T. Casey, "The Regulation of Professions in Canada", 2003 at page 14 where the author describes the factors to be taken into account in determining how the public is protected. Mr. Casey states as follows:

"A number of factors are taken into account in determining how the public might best be protected, including specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the offender, punishment of the offender, isolation of the offender, the denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of its members, and ensuring that the penalty imposed is not disparate with penalties imposed in other cases.<sup>13</sup> However, it may be argued that the factors of punishment and denunciation should not be given undue emphasis since these factors may more properly be considered to be part of the domain of criminal law.

A number of mitigating factors may be considered in determining the proper penalty for an offence:<sup>14</sup>

1. Attitude since the offence was committed. A less severe punishment may be imposed on an individual who genuinely recognizes that his or her conduct was wrong.<sup>15</sup>
2. The age and inexperience of the offender.<sup>16</sup>
3. Whether the misconduct is the individual's first offence.<sup>17</sup> It has been suggested that the penalty of revocation should be reserved for repeat offenders and the most serious cases.<sup>18</sup>
4. Whether the individual has pleaded guilty to the charge of professional misconduct which has been taken as showing the acceptance of responsibility for his or her actions.<sup>19</sup> However, a refusal to admit guilt is not to be taken as justifying a higher penalty since a person charged with an offence of professional misconduct is entitled to have the case against him or her proven and to make full answer in defence without fear of the threat of increased penalty.<sup>20</sup> A discipline committee was found to have erred where it imposed a mere severe sanction because

of an absence of remorse. The Court found that a mere absence of remorse could not be used as an aggravating factor because the physician was entitled to maintain his innocence. At most, an absence of remorse could disentitle the physician to leniency with respect to the penalty.<sup>20.1</sup>

5. Whether restitution has been made by the offender.<sup>21</sup>
6. The good character of the offender.<sup>22</sup>
7. A long unblemished record of professional service.<sup>23</sup>

38. A similar list of factors was set out in the decision of the Newfoundland Supreme Court in *Jaswal v. Newfoundland Medical Board* [1996] N.J. No 50 at paragraph 36 where the court states as follows:

“From the cases cited, the following is a non-exhaustive list of factors that ought to have been considered:

1. the nature and gravity of the proven allegations;
2. the age and experience of the offending physician;
3. the previous character of the physician and in particular the presence or absence of any prior complaints or convictions;
4. the age and mental condition of the offending physician;
5. the number of times the offence was proven to have occurred;
6. the role of the physician in acknowledging what had occurred;
7. whether the offending physician had already suffered other serious financial or other penalties as a result of the allegations having been made;
8. the impact of the incident on the offended patient;
9. the presence or absence of any mitigating circumstances;
10. the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine;
11. the need to maintain the public’s confidence in the integrity of the medical profession;
12. the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct;
13. the range of sentence in other similar cases.”

39. These factors have been helpful to us in determining the appropriate disposition in the case. We will consider them in the course of our decision.

## D. CONCLUSIONS ON DISPOSITION

40. The Hearing Committee has decided that a number of determinations are required to address our earlier findings that Dr. Osif was guilty of professional misconduct and professional incompetence. These determinations are summarized in paragraph 116 of this decision. Our rationale for these dispositions is set out below:

### (a) Revocation

41. We have concluded that Dr. Osif's licence should only be revoked if she is unable to remedy the deficiencies that led us to conclude that she was guilty of professional incompetence and if she cannot meet the standard expected of entry level family practitioners as measured by the CCFP exams within a reasonable time period. In our opinion, Dr. Osif's professional misconduct in the case of A.B. and M.S., although serious, does not demand revocation of her licence to protect the public interest. While professional incompetence could justify revocation in some circumstances, revocation is not appropriate if other measures such as re-education, conditions of licence and restrictions on scope of practice have a reasonable chance of success. There is a public interest in retaining qualified and competent physicians in Nova Scotia. If the public can be properly reassured that Dr. Osif will not likely repeat the pattern of carelessness identified in our decision, she should keep her licence to practice, albeit a restricted licence.

42. This is not to say that the members of the Hearing Committee have been particularly reassured by Dr. Osif's affidavit and the evidence at the disposition hearing. It seems to us that before Dr. Osif can correct her deficiencies she must have sufficient insight into her conduct and an appropriate attitude to recognize those deficiencies. The importance of such insight has been stressed repeatedly in the evidence before us and we are concerned that Dr. Osif has not demonstrated this insight.

43. In his report on the clinical assessment of Dr. Osif at the Queen Elizabeth II Health Sciences Centre, Dr. John Ross reached the following conclusions:

“Perhaps most concerning to me was the conversation we had during lunch on Thursday. I asked Dr. Osif what she considered her weaknesses. She told me that Dr. Howlett and I had pointed out that she should consider spending more time

with patients and provide better explanations to them – she would do this in the future. She then proceeded to tell me that she is a very good doctor, that the nursing and security staff at Northside General seek her out for second opinions. They are apparently very happy to see her come on shift because she can “clean the place up” and frequently finds things that her colleagues have missed. She participates in CME every year by attending a conference in Montreal that she feels is very good. She feels she is misunderstood by some of her colleagues and administrators and feels her skills are underappreciated. She also discussed the multiple CCFP failures and feels she cumulatively passed the exam. Lack of the CCFP apparently is the only thing preventing her from working at a centre like the QEII – she thinks she has the qualities to do so. Summarizing the above and other comments, **I have grave concerns that Dr. Osif lacks insight. I am concerned some of this is a reaction to negative reactions and feedback she receives – possibly overcompensating for her deficiencies...**

I appreciate the difficulty that the CPSNS has in objectively reviewing this physician’s performance. From my short interaction with Dr. Osif (observation of patient care and conversations with her) and review of the documents sent to me, I have grave concerns about her independent practice in the Emergency Department. If she was working in any of the seven Emergency Departments in Capital Health I would ask that she be restricted to double coverage shifts only where immediate back-up is available and closer scrutiny of her practice is possible over a specific probationary period. **Also, I would need to hear her honestly acknowledge that there are significant problems that might be addressed if she has the insight. Her current barrier to acknowledging her deficits is most concerning.**” [Emphasis added]

44. In our decision on the merits we too expressed concern that the overall pattern of carelessness exhibited by Dr. Osif demonstrated a lack of insight into the quality of her care for the patients involved.

45. At the disposition hearing, Dr. Hayes stressed the central importance of insight to the success of a program of re-education in Dr. Osif’s case. Dr. Hayes said that ...to be successful in a program or any learning endeavour, it's important to have the insight necessary in order to judge what they don't know, and to look at their ability to acquire the necessary skills to be successful”.

46. She was asked to clarify this point and did so in the following exchange:

**Q.** And why is that important, Dr. Hayes?

**A.** Without insight into having deficiencies, it is very difficult to address them because the insight needs to be there in order to be able to think that, okay,

this is a challenge I need to face. And also you need insight in order to say I've learned this part of it, but I still need to go on and learn this part or to develop the skill or knowledge a little bit further.

And insight is required to also know what kind of an approach you need to address that particular learning gap. Each learner has a different learning ... or a different type of learning ability. They learn in different ways. And they need insight into knowing how they learn best, and insight into being able to access the best way for them to learn.

Some people are visual learners and some people are auditory learners. Some people use both. And a learner needs to have insight into that as to how to bring the best things to bear to address a specific deficiency.”

47. Dr. Sinclair made similar comments in his evidence when he was asked about the qualities a learner needs in order to successfully complete any of the remedial programs that he considered. The transcript records the following exchange:

“**Q.** Now Dr. Sinclair, you've taken us through some of the educational prerequisites for the EM Program - for example, you've mentioned the CCFP. In addition to educational prerequisites, are there any other qualities that a learner needs in order to successfully complete any of these remedial programs that you've outlined?”

**A.** Well, I guess fundamentally, our premise in continuing education is that the learner has to have insight and has to identify their learning needs, has to be committed and honest in fulfilling those needs. And those are just ... I mean, they are critical to any program, but they are critical to the types of programs we offer because we are really looking at people that are in practice that have experience. And we are really their coach or facilitator, if you will, to achieve their learning needs. So if the physician isn't motivated, if they don't have insight, then our programs really don't achieve the aims that they should.”

48. We agree with these comments from Dr. Ross, Dr. Hayes and Dr. Sinclair about the importance of Dr. Osif's insight or lack of insight into her quality of care and her deficiencies as a physician. We also think that self-awareness and self-reflection are an important aspect of developing the insight needed to improve patient care. Dr. Abbyann Lynch in her report stresses the importance of self-reflection and self-awareness as the basis for moral behavior and for better patient management. We agree.

49. None the less, we have found very little in Dr. Osif's affidavit and oral evidence to demonstrate that she has developed sufficient insight into her failure to meet the standards of the

medical profession or the insight that is needed for a successful program of remediation of her deficiencies. Dr. Lynch's report, which was written before the hearing on the merits, is at best hopeful in her assessment of Dr. Osif's potential to develop self-awareness and self-reflection.

50. Otherwise, we have the affidavit evidence of Dr. Osif and her oral evidence at the disposition hearing. We repeat the following key paragraphs in the affidavit:

“15. When I received Dr. Lynch's report, I recognized that I was isolated in my practice and that it was not possible to achieve the type of collegiality to which she referred in my capacity at the Northside General Hospital. To address these issues, I would be willing to participate in “problem rounds” or departmental meetings to achieve the “gentle collegial effort” Dr. Lynch refers to in her report.

21. In Dr. Ross's assessment report and accompanying materials, he identified early closure as a potential issue in my practice, as did Dr. Field. This shortcoming of mine may have developed over my time in practice and through experience but it has never been brought to my attention before. Since the Hearing, I have learned that this problem is very common for physicians in my demographic bracket, i.e. my age and experience and practicing in a Level 3 hospital. Attached hereto as Exhibit “AA” is an article from The Medical Post, dated March 27, 2007 entitled, “So You Think You Can Diagnose?”. Dr. Patrick Croskerry is an expert in cognitive errors in critical thinking in Emergency Medicine who recognizes that the pressures inherent in the emergency room can affect the cognitive thinking of physicians. I would likely benefit from some coaching or continuing medical education in this area to help ameliorate this identified weakness.

22. I was not aware that early closure was a problem in my practice prior to this College process. I anticipate that I will be more likely to consider whether early closure has played a role in my diagnoses now that the issue has been brought to my attention. Being aware of the issue should help to prevent me from continuing this practice.

31. Having carefully read the reports of Dr. Ross, Dr. Field and Dr. MacLeod, and having participated in the Ethics session with Dr. Lynch and having carefully read the findings of the Hearing Committee, I believe I would benefit from having closer working relationships with other physicians when I return to practice. I see that I need feedback and the ability to confer with colleagues to enhance my self awareness so as to limit the potential effect of the early closure practice that has been identified, as well as to develop collegial relationships that may have been lacking in the past. I would also benefit from participating in meetings akin to the “problem rounds” that several of the experts who testified referred to in their evidence.”

51. Although these are positive statements which acknowledge some deficiencies and the need for improvement we are unable to accept them entirely at face value. In her answers to the questions of the members of the Hearing Panel, which have been set out at length earlier in this decision, she displayed an inability to recognize problems with her own conduct or attitude and a tendency to blame others for her situation.

52. Our concerns about Dr. Osif's openness to change her attitude and her conduct because of lack of insight, are reinforced somewhat by our concerns about her honesty as reflected in our findings on the merits of the charges. For the most part, where her evidence conflicted with others, we accepted their evidence. We take little comfort from Dr. Lynch's assessment of the ethical aspects of Dr. Osif's clinical practice. The readings in the plan for the ethics education session prepared by Dr. Lynch for Dr. Osif deal specifically with integrity and truthfulness and lying in speaking with patients or discussions with colleagues. Dr. Osif's evidence in this case was given after this ethics education discussion with Dr. Lynch and we were unable to accept her testimony in several instances.

53. Dr. Osif's lack of insight into her deficiencies and therefore her aptitude to be re-educated points in the direction of revocation of her licence in order to assure the safety of the public. On the other hand, looking at the evidence in the case as a whole, there is some evidence of Dr. Osif's willingness to correct her deficiencies. She made significant effort in continuing medical education and re-certification programs during the period of investigation of these charges up to the present time. She did engage in the ethics education session and readings organized by Dr. Lynch. She took the course for Record Keeping for Physicians from Dr. Wu. Her affidavit partly acknowledges her deficiencies.

54. In her evidence Dr. Hayes expressed a degree of optimism about the potential for a remediation program for Dr. Osif. While the details of such a re-education program remain murky, Dr. Hayes' acknowledgement of this optimism for Dr. Osif is significant.

55. A factor against revocation in this case is the absence of any previous disciplinary history with the College. We can give no weight to the complaint file maintained by the District Health Authority. There was no direct evidence before us on most of those matters. Many of the matters in that file were not brought to her attention in a timely manner which would allow her to correct

the record with her version of what happened. In the absence of a previous disciplinary record with the College, we cannot easily conclude that she is not amenable to correction and rehabilitation.

56. We give some weight to the petition evidence presented at the disposition hearing to the extent that it shows that there is a degree of positive perception of Dr. Osif in the communities that she served as an emergency room physician at the Northside General Hospital.

57. In addition to these factors, we acknowledge that we are reluctant to deprive Dr. Osif of her licence to practice the profession to which she has devoted her entire adult life. However, we would not shrink from doing so if we did not believe that a number of strict conditions and restrictions are sufficient in Dr. Osif's case to assure public safety. We reject revocation of Dr. Osif's licence unless she fails to complete the steps required to allow her to remedy her deficiencies and to demonstrate by objective means that she can meet the standards of the medical profession and provided that, upon reinstatement, her licence will be restricted to safeguard the public.

#### **(b) Penalty**

58. With respect to the charges on which we have found professional misconduct a penalty is required, both to bring home to Dr. Osif the seriousness of her conduct and to demonstrate to other members of the medical profession and to the public that acts of professional misconduct deserve censure. Accordingly, with respect to our findings of professional misconduct, we have decided to reprimand Dr. Osif for her conduct in the cases of A.B. and M.S. as set out in paragraphs 332 to 336 of our decision on the merits. In addition, we have decided that her licence to practice should be suspended for three months and that this three month suspension shall be considered served in view of the interim suspension of her licence since May of 2007 and the previous restriction of her licence. Both Ms. Hickey and Mr. Donovan provided us with previous cases on penalty in matters of professional misconduct. We have chosen a penalty on the low end of the sanctions typically imposed in cases of professional misconduct. We think that a reprimand and three months suspension is proportionate given the nature and gravity of the proven allegations of misconduct.

**(c) Re-education**

59. We attach a great deal more significance to the findings of the professional incompetence. In our view, in the circumstances of this case, it is inappropriate to penalize Dr. Osif's incompetence; what is needed are measures that require Dr. Osif to meet the standards of the medical profession and that support a process that make that possible. Such measures, in this case, require both the imposition of conditions which must be met before Dr. Osif's licence is reinstated and restrictions on her practice after the reinstatement of her licence.

60. Accordingly, we accept, in part, the approach proposed by Mr. Donovan on behalf of Dr. Osif. Dr. Osif should not be permitted to return to practice until she has satisfactorily completed a supervised program approved by the College to remedy her deficiencies. To this end we have concluded that a re-education program should be comprised of the same elements as the Enhancement/Retraining Process used by the College of Physicians and Surgeons of Ontario.

61. Dr. Osif's licence will remain suspended until she satisfactorily completes a program of re-education approved by the College which includes the following elements:

1. A period of high supervision in which Dr. Osif may work under the direct supervision of another physician. Essentially she will work at the level of a medical student where every case and the management plan is reviewed and approved by the supervisor. Only once the supervisor is satisfied that Dr. Osif is safe to work independently, although under some supervision, will she be allowed to enter the next phase of re-education;
2. A period of decreased supervision in which Dr. Osif may work in practice with other physicians but with a degree of supervision. She will meet with her supervisor no less than weekly to review documentation and patient care and to discuss identified learning needs. As the learning needs are met, the frequency of supervisory meetings can be decreased;
3. Dr. Osif's supervisors shall provide periodic reports to the College of Dr. Osif's abilities and knowledge. If at any time during this phase there are patient safety concerns, the College must be notified;
4. Completion of a program on ethics to be recommended by Dr. Abbyann Lynch and approved by the College with reports to the College which will be made available to those supervising her program;

5. Completion of the record keeping course offered by Dr. Wu on behalf of the Ontario College of Physicians and Surgeons;

6. Continued active participation in continuing medical education activities that meet the membership requirements of the College of Family Physicians of Canada;

7. Dr. Osif is responsible for all of the costs of this re-education program including all applicable fees, payment of supervisors for their time and the cost of assessment.

62. Regrettably, we have not been provided with sufficient evidence from either the College or Dr. Osif to more specifically prescribe such important details of this program as the time in each phase, the basis for transition from high supervision to decreased supervision, the location and the setting of the conduct of the program, the qualifications of the supervisors, the degree of supervision required, the nature and frequency of assessment reports, sharing of information among those concerned and the extent of educational licence required to allow her to engage in this program. We look to Dr. Osif and the College to agree on a detailed plan which embodies the above elements. In the event that they are unable to agree on a plan, we reserve jurisdiction to determine the terms of the plan and to make further orders or dispositions under Section 66(2)(e).

63. While we acknowledge that the evidence presented by the College shows serious difficulties in implementing such a program, especially the problem of availability of qualified supervisors, we have to balance these difficulties with the potential for success acknowledged by Dr. Hayes in her cross-examination and asserted by Dr. Osif in her affidavit.

#### **(d) CCFP Exams**

64. Further, in our judgment, Dr. Osif's licence to practice should remain suspended, except for the appropriate limited education licence needed to participate in her program of re-education, until she has successfully completed the CCFP exams. Success in the CCFP exams demonstrates in an objective manner that a physician meets the requirements of an entry-level family practice physician. Given our finding of Dr. Osif's professional incompetence, protection of the public interest requires that she be able to demonstrate that she is qualified and able to fully meet the requirements of a fully licensed medical practitioner. In our opinion, passing the CCFP exams is the appropriate way to demonstrate her qualifications. The CCFP exams are a

standard examination of knowledge and skills in family medicine. If Dr. Osif is unable to pass the CCFP exams we cannot be assured that she has the knowledge and skills required to safely function as a licenced medical practitioner.

65. Dr. Osif has attempted on four occasions to obtain certification from the College of Family Physicians of Canada but failed in the Certification Examination in the fall of 1998, spring 1999, fall 1999, and in the fall of 2001. She passed the oral portion of the examination on three occasions and the written portion on one occasion, but not both portions at the same time. In her affidavit, Dr. Osif says “ I believe it would now be difficult to successfully sit the CCFP exams”. When asked why she believed this, she said: “I do not have confidence in the result”. This same distrust of the CCFP exams appears in the correspondence between Dr. Osif’s counsel and the Canadian College of Family Physicians which is attached the affidavit of Dr. Little. However, neither the College of Family Physicians of Canada or the College of Physicians and Surgeons of Nova Scotia accepted her criticisms of the examination and, having reviewed the correspondence between her and both Colleges, we do not doubt the validity of the CCFP exams as a reliable method of examination.

66. While it may be difficult for Dr. Osif to sit the CCFP exams because she lacks confidence in its administration, we think that it is essential that she do so to assure the public that she meets at least the entry level competency expected of a physician in family practice in Nova Scotia.

67. We do not agree that it would be unfair to require her to be successful in the CCFP exams before her licence can be restored. Dr. Osif’s partial success on both parts of the examination in the past shows that she should be able to succeed. With the benefit of the re-education program required by this decision, she should be greatly assisted in the oral clinical portion of the exam. The written portion is a standardized test of what a family physician needs to know to practice competently. In our view, it is not unfair to require her to have that knowledge and to exhibit the necessary clinical skill to pass the CCFP exams.

68. We do not consider it appropriate to allow an indefinite time to complete the CCFP exams. If Dr. Osif cannot do so within a reasonable time frame, our optimism about her successful re-education will no longer be warranted. Accordingly we have determined that Dr.

Osif's licence should not be reinstated unless she passes the CCFP exams within two years of the date of this decision.

**(e) Restriction on Licence**

69. The Committee has determined that when Dr. Osif's licence is reinstated, her practice should be limited to practicing with other physicians and should not include practice in a hospital emergency room. We have also determined that Dr. Osif should be entitled to apply to have these restrictions reviewed by the College after two years from the reinstatement of her licence.

70. We are fully aware that, during the entire period of Dr. Osif's work in Canada, she has worked in the emergency room of a small rural hospital, first in Newfoundland and since 1996 in the Northside General Hospital in North Sydney. Most of that time she worked on the night shift when she would be the only physician in the hospital.

71. In her affidavit, Dr. Osif makes the following statements:

“Since coming to Canada as a refugee in 1987, I have not had a significant family medicine practice. I have been predominantly a physician working in the ER. I had a limited, part time family practice in North Sydney from December, 1997 to Summer 2002, consisting of two afternoons per week.

It is not my intention to return to family practice upon the reinstatement of my licence, as this is not the type of medicine that I have ever wished to practice full time and, in the final years of practice, I do not wish to develop a practice in a new area. I want to return to practice in the emergency room where I have worked throughout my career.”

72. We are not able to accept Dr. Osif's preference to immediately return to the same situation where she engaged in the conduct which we have judged to constitute professional incompetence. First of all, much of the evidence indicates that she should not practice alone. In Dr. Ross's clinical assessment he reports as follows:

“I appreciate the difficulty that the CPSNS has in objectively reviewing this physician's performance. From my short interaction with Dr. Osif (Observation of patient care and conversations with her) and review of the documents sent to me, I have grave concerns about her independent practice in the Emergency Department. If she was working in any of the seven Emergency Departments in Capital Health I would ask that she be restricted to double coverage shifts only where immediate back-up is available and closer scrutiny of her practice is possible over a specific probationary period.”

73. To similar effect, Dr. Abbyann Lynch in her report stressed Dr. Osif's "self-isolation". In her report of September 24, 2007, Dr. Lynch records the following observations:

"In discussion of the CMA *Code of Ethics*, we gave attention first to the matter of 'treating patients with dignity and ...respect'. Here, as later in discussion, we examined the various modes of communication with patients, the necessity of conveying information carefully and repeatedly, the importance of listening, and prompting questions so that there would be some certainty that the information would be grasped, if not totally understood. We spoke about the need to recognize one's own limitations in this area, as well as of the importance of involving colleagues for referral, when that seemed appropriate. Some time was spent on #47 ('Be willing to teach and learn...') and #53 and #54 - "Seek help from colleagues ... and Protect and enhance your own health and well-being by identifying those stress factors in ... professional and personal lives that can be managed by developing and practicing appropriate coping strategies". While Dr. Osif verbally agreed in these various matters, it seemed to me that she had had some greater trouble in their practice. Evidently, she has somehow isolated herself in the work she does in terms of her chosen hours in Emerg (nights only, Saturday, etc.) so that collegial interaction with her peers may have suffered. While she professed that she herself had chosen to make this her situation, she will need help to understand what she is missing by way of needed feedback from her peers."

74. Dr. Osif acknowledges Dr. Lynch's concern about self-isolation in paragraph 15 of her affidavit where she states the following:

"When I received Dr. Lynch's report, I recognized that I was isolated in my practice and that it was not possible to achieve the type of collegiality to which she referred in my capacity at the Northside General Hospital. To address these issues, I would be willing to participate in "problem rounds" or departmental meetings to achieve the "gentle collegial effort" Dr. Lynch refers to in her report."

75. Dr. Osif concludes her affidavit evidence by returning to this point in paragraph 31 where she states:

"Having carefully read the reports of Dr. Ross, Dr. Field and Dr. MacLeod, and having participated in the Ethics session with Dr. Lynch and having carefully read the findings of the Hearing Committee, I believe I would benefit from having closer working relationships with other physicians when I return to practice. I see that I need feedback and the ability to confer with colleagues to enhance my self awareness so as to limit the potential effect of the early closure practice that has been identified, as well as to develop collegial relationships that may have been lacking in the past. I would also benefit from participating in meetings akin to the

“problem rounds” that several of the experts who testified referred to in their evidence.”

76. However, when questioned about “rounds” by members of the Committee, Dr. Osif could not be specific about how she would address her self-isolation or the actual steps she would take to participate in “problem rounds”.

77. Dr. Osif should not return to practice in the same circumstances where she engaged in a pattern of conduct amounting to professional incompetence. After a reasonable period in practice with other physicians outside of a hospital emergency room, and after further training and re-education, she may be able to return to an emergency room practice without raising any public safety concerns. We would not close the door on that possibility. However, her path back to the level of competence needed to function safely in an emergency department should be a gradual one and she will need re-education to do so.

78. The College proposes that Dr. Osif’s return to practice should not be permitted until she successfully completes the one year residency program in emergency medicine and passes the Canadian College of Family Physicians (Emergency Medicine) exams (the “CCFP (EM) exams”). Dr. Osif indicated in her affidavit that she intended to study for the CCEP (EM) exams and, if allowed, to write that exam. However, from Dr. Sinclair’s evidence, we are uncertain that she can do this. She would first have to pass the CCFP exams and then meet eligibility criteria to write the CCFP (EM) exam based on her practice experience.

79. It may be either that Dr. Osif is able to write the CCFP (EM) exams after she gets her CCFP certification for family practice or she may be able in the future to justify a limited emergency room practice as a family medicine practitioner. Accordingly, she may apply to the College for review of the restrictions on her practice after two years from the reinstatement of her licence.

## **E. COSTS**

80. The College has requested the Hearing Committee to order Dr. Osif to pay costs to the College in the amount of \$250,000.00. We have been provided with an affidavit of Marjorie Hickey which documents the expenses incurred by the College, the Investigation Committee, the Hearing Committee, the honorarium paid to the Members of those Committees and the legal fees and disbursements of the College relating to the investigation and hearing of this matter. The total cost, including an assumed cost for the disposition phase, amounts to approximately \$400,000.00.

81. Dr. Osif 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 her, and that, in any event, the College should be deprived of costs because of the conduct of the College and procedural irregularities throughout the process of investigation and hearing.

### **(a) Principles**

82. Costs may be awarded to the College pursuant to Section 67 of the *Medical Act* which provides:

**“67 (1)** When a hearing committee finds a member or associate member guilty of charges relating to a disciplinary matter, it may order that the member or associate member pay the costs of the Council, in whole or in part.

#### **Condition of registration or licence**

**(2)** When a member or associate member is ordered to pay costs pursuant to subsection (1), the Council may make it a condition of the registration or licence of the member or associate member that such costs be paid forthwith, or at such time and on such terms as the Council may fix.

#### **"Costs of the Council" defined**

**(3)** For the purpose of this Section, "Costs of the Council" include

(a) expenses incurred by the College, the Council, the investigation committee and the hearing committee;

(b) honoraria paid to members of the investigation committee and the hearing committee; and

(c) solicitor and client costs and disbursements of the College relating to the investigation and hearing of the complaint. 1995-96, c. 10, s. 67.”

83. Some aspects of Section 67 should be noted. The Committee may order the member to pay the costs of the College but it has no authority to order the College to pay the costs of the member who has been found guilty of charges. The Committee is not required to order the member to pay costs but has the discretion to do so or not to do so. The Committee’s discretion extends to whether to order costs in whole or in part.

84. In deciding whether to order Dr. Osif to pay costs and determining whether to order her 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 subsection 4(3) 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.

85. An order for costs under Section 67, in light of subsection 4(3), is not a penalty. To the extent that penalties are required, the Committee has a wide discretion under Section 66 including the power to fine a member in an amount up to \$15,000.00. The purpose of an order of costs under Section 67 is to appropriately reimburse the College for its expenses for investigating and proving professional misconduct or professional incompetence. However, Section 67 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.

### **(b) Costs in Relation to Success by the College**

86. In this case, the College should be appropriately reimbursed for its expenses in proving that Dr. Osif is guilty of professional misconduct and professional incompetence. All of the costs claimed by the College fall under “Costs of the Council” as defined in subsection 67(3). The

greater part of these costs are legal fees and disbursements, payment of expert witness fees, and the honoraria paid to the members of the Investigation Committee and the Hearing Committee. We have reviewed the amounts claimed as set out and documented in Marjorie Hickey's affidavit and find that the amounts of the expenses themselves are reasonable and properly fall within the categories included in "Costs of the Council" in subsection 67(3).

87. The expenses of the College in this matter are very high. They are undoubtedly a significant burden to the College. At the same time, the amount is so large that no individual could easily pay these costs. To prove professional incompetence the College was required to show a pattern of carelessness in Dr. Osif's conduct of her medical practice. By its very nature, this proof requires more investigation and a longer hearing than specific acts of misconduct. In this case the hearing was lengthy. However, a close analysis of the expenses of investigating and proving the charges which led to a finding of guilt and consideration of public interest factors leads us to conclude that the order to pay costs should be substantially lower than the actual expenses of the College.

88. It is not in the public interest to require Dr. Osif to reimburse the College for its expenses in the investigation and hearing of the charges that we have dismissed. Separating out the expenses of the College in proving the charges which led to a guilty finding is not easy to do in a precise, mathematical way. It is not so difficult in respect of the dismissed charges relating to Dr. Osif's comments on the Complaint File and the complaint involving Dr. S., but the charges arising out of Dr. Field's report and Dr. Ross' report and the reduction cases led to both the findings of guilt and the dismissal of charges. The evidence in these matters was closely intertwined.

89. We have assessed the degree to which the College was substantially successful in establishing guilt. The College was substantially successful in both the charges related to A.B. and those to M.S. A few of these charges were dismissed but they were not significant overall. The College had mixed success in the pharyngitis cases, in the QEII assessment cases and the reduction cases. Dr. Osif was successful on the charges relating to inappropriate prescription of antibiotics, the charges related to her comments on the Complaint File and those relating to discourtesy to Dr. S.

90. Procedural issues occupied a large part of this hearing and required extensive written submissions and time at the hearing. The College was successful on the request of Dr. Osif to withhold disclosure of parts of her expert reports and on her objection to the admissibility of expert reports and evidence at the disposition phase. The College was substantially successful in Dr. Osif's procedural objections relating to the investigation of the A.B. complaint and related matters, specifically the use of the Complaint File. The Hearing Committee did not accept the motion to dismiss the charges based on the report of Dr. Ross and Dr. MacLeod, and no charge was dismissed by reason of the College's use of the Complaint File. A few of the charges raised a question of investigative unfairness but these were dismissed on their merits. Similarly, the charges based on Dr. Osif's comments on the Complaint File were dismissed on their merits and not on procedural grounds. On the other hand, Dr. Osif successfully objected to the College presenting evidence of electronic medical records.

91. We have examined in detail the records provided to us of the McInnes Cooper fees, the payment of expert witnesses and the payment of honoraria to the Committee. In an effort to give every possible benefit of the doubt to Dr. Osif, we have deducted from the total expenses of the College the amounts which correspond to time entries and payment of expert fees involving Dr. Ross, Dr. Field, Dr. MacLeod, Dr. Sutton and Dr. Levesque as well as any amounts for time related to the complaint of Dr. S. and the EMR records. We also deducted the amount of HST applicable to those costs. This method of calculation reduces the potential order to pay costs not only by the amounts that we estimate were expended on items on which Dr. Osif was successful, but also on the amounts expended where there was mixed success. This method leads us to reduce the College's expenses by one-third.

92. As a second method of estimating the expenses of the College in establishing Dr. Osif's guilt for professional misconduct and professional incompetence, we looked at the days of hearing to roughly estimate the amount of time in the hearing spent on the issues which involved Dr. Field, Dr. Ross, Dr. MacLeod, Dr. Levesque and the portions of Dr. Osif's testimony that corresponded to theirs. By our estimate, about one-third of the hearing was devoted to issues on which Dr. Osif was successful or on which there was mixed success.

93. Acknowledging the roughness of this calculation, this has brought us to the conclusion that the actual cost of the College in successfully proving the charges of professional misconduct and professional incompetence by Dr. Osif is approximately \$265,000.00. This figure provides us with a starting point for our consideration of public interest factors that could reduce the order to pay costs further.

### (c) Jurisprudence

94. Both counsel have 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:

“51. 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.”

95. We are also mindful of the comments of the Nova Scotia Court of Appeal in *Creager v. Provincial Medical Board of Nova Scotia* [2005] N.S.J. No 32 about reasonableness of 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...."

96. We also have to consider the submissions made on behalf of Dr. Osif that the College should be deprived of its costs because of procedural irregularities.

**(d) *Jaswal* Factors**

97. 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 eliminating from an order to pay costs the amount we estimate related to charges on which Dr. Osif was successful or had mixed success;
- 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 with the possible exception of Dr. S., provided relevant evidence which led to findings of guilt. No witnesses were called to establish Dr. Osif's complaints on the Complaint File. This factor would not result in a reduction of costs;
- c) "*Whether the persons presenting the case against the doctor could reasonably have anticipated the result based upon what they knew prior to the hearing*": Having attempted to eliminate all of 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 knew prior to the hearing*”: Here again this factor would not further reduce an order to pay costs because we have already reduced the expenses of the College to reflect the charges on which the College was not successful or was partially successful. We have also deducted the expenses incurred by the College in respect of their effort to introduce evidence related to electronic medical records and several witnesses;

- e) *“Whether the doctor cooperated with respect to the investigation and offered to facilitate proof by admissions, etc.”*: In this case Dr. Osif cooperated with the College throughout and the order to pay costs should reflect that cooperation;
- f) *“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”*: We have been provided with some evidence of Dr. Osif’s financial circumstances. Her affidavit deposes to her debt and the debt of her personal corporation. We have no information on her assets. We know that Dr. Osif has not been able to practice medicine since her licence was restricted in September, 2006 to prevent work in an emergency room and then later suspended in May of 2007. She has not been employed during this time and this obviously has had a significant financial impact on her. The disposition that we have determined requires her to take a number of steps before her licence can be reinstated. This too will have a significant financial impact on her. Undoubtedly, the restriction of her licence upon reinstatement will have financial consequences. This factor points to a reduction in the amount of costs that Dr. Osif should pay to the College. It also is connected with the *Creager* factors which are discussed below.

**(e) Creager Factors**

98. 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. Osif's licence. Given what we know about her financial circumstances that would likely amount to a "back-door revocation". Such an outcome would not result if Dr. Osif were permitted to pay the costs of the College over a period of time after the reinstatement of her licence, provided that the monthly amount was reasonably achievable on a physician's income.

99. We doubt that the Hearing Committee has the power to make a periodic payments order because subsection 67(2) of the *Act* gives the discretion to the Council of the College to make it a condition of licence of the member that such costs be paid forthwith or at such time and on such terms as the Council may fix. Given that specific grant of discretion to the Council, we can only recommend a periodic payment after Dr. Osif's licence is restored. The Chair of the Committee raised this issue with counsel for the College during oral submissions and she indicated that a recommendation from the Committee on periodic payment would be brought to Council and recommended by her to them.

100. We also accept that a large order to pay costs could deter a physician from contesting charges of professional misconduct and professional incompetence and force him or her 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.

**(f) Should the College be Deprived of Its Costs Because of Irregularities?**

101. Ms. Bilek, on behalf of Dr. Osif, made the submission that the College should be deprived of its costs because of irregular or improper conduct in this matter. These submissions deal with three main points.

102. It is submitted that the College brought an excessive number of charges amounting to an unrestrained pursuit of allegations against Dr. Osif. We do not accept that submission. We cannot conclude that the charges on which we have found Dr. Osif guilty were excessive and unnecessary. The onus on the College of establishing professional incompetence requires the College to prove a pattern of carelessness. By its nature, meeting that onus requires charges of conduct below the required standards over a period of time in different circumstances. We do not accept that the College should be deprived of costs for bringing forward the evidence of a variety of instances that collectively demonstrate professional incompetence.

103. We do accept that the College should not recover its expenses related to charges which were not proven in this case. To that extent, we agree that the College should be deprived of some of its expenses in an order to pay costs.

104. The second point emphasized by counsel for Dr. Osif is that the College should have proceeded only with the D.B. complaint. This is a variant of the first point. It should be borne in mind that an important feature of the disciplinary scheme in the *Medical Act* is found in Section 51 which provides:

“51. A person or disciplinary committee investigating a disciplinary matter concerning a member or associate member may investigate any other disciplinary matter concerning the member or associate member that arises in the course of the investigation.”

105. In this case, the College did investigate matters that arose in the course of its investigation of the D.B. complaint and brought forward charges based on those additional matters. In our decision, we accepted that the College had proven charges of professional misconduct and professional incompetence in relation to a significant number of those charges. We see no basis to deprive the College of its costs relating to matters properly within the scope of Section 51 of the *Act* which resulted in a finding of guilt.

106. The third submission was that the College should be deprived of recovery of its costs because there were procedural irregularities within the control of the College. In this regard, we did find in our decision on the merits that giving the Complaint File Summary to Dr. MacLeod was misleading. However, we concluded that there was no substantive unfairness to Dr. Osif and

we did not dismiss any charges on the basis of the Complaint File Summary point. The College should not be deprived of costs on account of this factor.

107. Counsel also argues that we should reduce the amount of costs by the expenses of the College in relation to its attempt to introduce additional evidence on electronic medical records. We agree with that point but we do not consider the College's attempt to be an irregularity.

108. Counsel also submitted that the College was guilty of improper conduct in relation to the initial cost claim which, we are told, included an item for \$40,047.25, which was not substantiated upon review of the underlying factual documents. We accept that this was a good faith error. Ms. Hickey did not initially provide the underlying factual documents related to costs to counsel for Dr. Osif because they included the invoices from the Chair's law firm and the honorarium claims sheets of the members of the Committee. It is not at all surprising that Ms. Hickey wanted to have the Chair's direction before providing those documents. That direction was given and the question over the \$40,047.25 item was cleared up. Nothing in this question leads to the conclusion that the College should be deprived of costs.

109. Counsel also argued that in cross-examination of Dr. Osif, Ms. Hickey put forward an unsupported proposition to Dr. Osif and by the means challenged her credibility. Counsel in cross-examination will sometimes put unsupported propositions to a witness. In this case, Ms. Hickey acknowledged her error and apologized. We do not find that there was any impropriety that should affect an order to pay costs.

110. Counsel also argued that it was improper for Dr. Little to contact Dr. MacAuley of the Ontario College of Physicians and Surgeons after the College had been notified that Dr. MacAuley was on Dr. Osif's witness list for the disposition hearing. We see nothing improper about Dr. Little contacting Dr. MacAuley, his colleague at the College of Physicians and Surgeons of Ontario in advance of the disposition hearing.

111. Accordingly, we do not accept the submission that the College should be deprived of costs for the reasons advanced by counsel for Dr. Osif.

**(g) Conclusion on Costs**

112. Bearing all of these factors in mind and, subject to a major qualification, the Committee orders Dr. Osif to pay \$200,000.00 towards the expenses of the College in this case. The qualification is that this amount will be reduced by the reasonable expenses of Dr. Osif to pay for the cost of successful completion of the program of re-education and assessment required by our disposition of these charges under Section 66. For example, if Dr. Osif spends \$100,000.00 on the reasonable costs of a program of high supervision, decreased supervision, assessment and writing the CCFP exams, the amount of costs that she must pay to the College will be reduced by \$100,000.00.

113. Our whole disposition is aimed at allowing Dr. Osif to re-educate herself, to remedy the incompetence demonstrated in this hearing and to show by an objective standard that she is able to meet the requirements of a licensed medical practitioner. To the extent that Dr. Osif does this successfully, her costs will be reduced. While, in effect, this requires the College to pay for her remedial program by foregoing costs, we consider it to be in the public interest that Dr. Osif be given the opportunity to remedy her deficiencies and to meet the standards of the medical profession. This will be a costly enterprise for her because she will remain on suspension other than for educational purposes, having already served a long period of administrative suspension pending disposition of these charges.

114. If Dr. Osif does not successfully engage in the program of re-education that we have stipulated or is unsuccessful in meeting the requirements of the CCFP exams the cost order will not be reduced. We acknowledge the financial burden on the College from the investigation and prosecution of this case but, having considered all of the factors discussed above, we believe that a reduction in costs to reflect the expense of successful rehabilitation is warranted in the circumstances of this case.

115. We recommend to the Council of the College that Dr. Osif be required as a condition of licence to pay \$2,000.00 per month starting at the end of the month in which her licence is reinstated until the balance of the order for costs is paid in full. We further recommend to the Council that in the event that Dr. Osif does not complete the program of re-education we have

ordered under Section 66 or cannot complete the CCFP exams successfully within the two years of this order the costs be made payable forthwith at that time.

## F. SUMMARY OF DISPOSITION

116. In summary, the Hearing Committee has determined pursuant to Section 66 and 67 of the *Medical Act* that:

1. Dr. Stani Osif is reprimanded and a three month suspension of her licence is imposed for professional misconduct; namely, that in the A.B. case, she did not conduct a proper history and deliberately did no physical examination, but recorded on A.B.'s chart that she did so, and that, in the case of M.S., she was dismissive and indifferent to the well-being of M.S. who was gravely ill and in need of significant medical attention. The three month's suspension shall be considered served.

2. Dr. Osif's licence to practice medicine shall be suspended for an indefinite period until she has satisfactorily complete a program of re-education, approved by the College, which includes the following elements:

(a) A period of high supervision in which Dr. Osif may work under the direct supervision of another physician. Essentially she will work at the level of a medical student where every case and the management plan is reviewed and approved by the supervisor. Only once the supervisor is satisfied that Dr. Osif is safe to work independently, although under some supervision, will she be allowed to enter the next phase of re-education;

(b) A period of decreased supervision in which Dr. Osif may work in practice with other physicians but with a degree of supervision. She will meet with her supervisor no less than weekly to review documentation and patient care and to discuss identified learning needs. As the learning needs are met, the frequency of supervisory meetings can be decreased;

(c) Those supervising Dr. Osif shall provide periodic assessment of Dr. Osif's abilities and knowledge level and shall report their assessment to the College;

(d) Completion of a program on ethics to be recommended by Dr. Abbyann Lynch and approved by the College with reports to the College which will be made available to those supervising her program;

(e) Completion of the Record Keeping Course offered by Dr. Wu on behalf of the Ontario College of Physicians and Surgeons;

(f) Continued active participation in continuing medical education activities that meet the membership requirements of the College of Family Physicians of Canada; and

(g) Successful completion of the Canadian College of Family Physicians Certification Exam.

3. Dr. Osif is responsible for all of the costs of the re-education program set out in sub-paragraph 2, including all applicable fees, payment of supervisors and the cost of assessment.

4. In the event of any disagreement between Dr. Osif and the College concerning the details of the program in sub-paragraph 2, the Hearing Committee reserves jurisdiction to determine the details of the program and to make further orders or dispositions under Section 66(2)(e) of the *Act*.

5. Upon completion of the re-education program in sub-paragraph 2 including the successful completion of the Canadian College of Family Physicians Certification exams, Dr. Osif's licence to practice shall be reinstated subject to the following conditions:

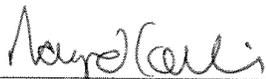
- a) Dr. Osif's practice is restricted to practice with other physicians;
- b) Dr. Osif is subject to audit by the College including both chart reviews and appropriate interviews; and
- c) Dr. Osif may not practice in a hospital emergency department.

6. Dr. Osif may apply to the College for review of the conditions in sub-paragraph 5, after two years have passed from the date of the restoration of her licence.

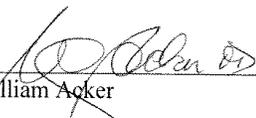
7. Dr. Osif shall pay costs to the College in the amount of \$200,000 less the reasonable expenses incurred by her in successfully completing the re-education program in sub-paragraph 2. The Committee recommends to the Council that payment of these costs shall be delayed until Dr. Osif's licence is reinstated under sub-paragraph 5 and shall be payable in the amount of \$2,000. per month at the beginning of each month after the date of reinstatement.

8. In the event that Dr. Osif does not successfully complete the program in sub-paragraph 2 including passing the Canadian College of Family Physicians Certification exams within two years of the date of this decision, her licence to practice shall be revoked and her name shall be stricken from the Register in which it is entered. The Committee recommends to the Council that if Dr. Osif's licence is revoked, she shall pay the costs of the College in the amount of \$200,000. forthwith.

This decision given at Halifax, this 26th day of June , 2008.



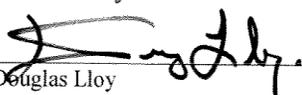
Raymond F. Larkin, Q.C. – Chair



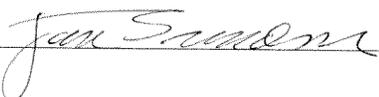
Dr. William Acker



Dr. Leslie Whynot



Mr. Douglas Lloy



Dr. Jan Sundin