

PROVINCE OF NOVA SCOTIA)
COUNTY OF HALIFAX)

IN THE MATTER OF: The *Canada Evidence Act*

- and -

IN THE MATTER OF: The *Medical Act*, S.N.S. 1995-96, c. 10

- and -

IN THE MATTER OF: Dr. W. H. Michael Christie

DECISION

Counsel: Marjorie A. Hickey, Q.C.
for the College of Physicians and Surgeons of Nova Scotia

Colin J. Clarke
for Dr. W. H. Michael Christie

Members of Hearing Committee: Alan J. Stern, Q.C., Chair
Dr. John R. Ruedy
Dr. Shelagh Leahey
Gwen Haliburton
Dr. Robert N. Anderson

Date of Hearing: July 25, 2000, January 15, 16 & 17, 2001

Date of Decision: April 6, 2001

INTRODUCTION

The names of certain witnesses do not appear in this Decision in accordance with the submissions of counsel and acceptance of these submissions by the Hearing Committee.

On June 16, 2000, the College of Physicians and Surgeons of Nova Scotia gave a Notice of Hearing to Dr. W. H. Michael Christie which stated:

On behalf of the College of Physicians and Surgeons of Nova Scotia, notice is hereby given to you that in consequence of complaints made against you, a Hearing is to be held into the following matters:

THAT being registered under the Medical Act, S.N.S., 1995-96, c.10, and being a medical practitioner in the Province of Nova Scotia, it is alleged that:

- 1. From in or about September 1997 to approximately October 1998, during the time when you were in a physician/patient relationship with Patient A, a minor:**
 - (a) You engaged in inappropriate conduct with Patient A. In particular, you did one or more of the following:**
 - (i) During an examination of Patient A following complaints arising from a head injury, you conducted an examination of his genitals, including the taking of a semen sample, which was inappropriate in the circumstances;**
 - (ii) During your subsequent appointments with Patient A, you unnecessarily took semen samples;**
 - (iii) During your appointments with Patient A when semen samples were taken, you masturbated Patient A and/or observed him engaging in masturbation at your request;**
 - (iv) You inappropriately treated Patient A for low sperm count;**
 - (v) You made inquiries about Patient A's sexual history, including inquiries about masturbation, which were inappropriate in the circumstances;**

- (vi) **You called Patient A at his home and made inappropriate inquiries and/or comments about whether Patient A had recently masturbated;**
 - (vii) **You made inappropriate comments and/or inquiries regarding Patient A's experience with pornography;**
 - (viii) **You attended at Patient A's family residence and inappropriately examined his genitals while alone with Patient A;**
 - (ix) **During your examination of Patient A's genitals, you failed to wear gloves;**
 - (x) **You inappropriately gave Patient A and his family a gift of a used computer and accessories; and**
 - (xi) **You inappropriately offered to pay for Patient A's extra-curricular activities.**
2. **From in or about September, 1997 to October, 1998, during the time when you were in a physician/patient relationship with Patient B, who was a minor:**
- (a) **You engaged in inappropriate conduct with Patient B. In particular, you did one or more of the following:**
 - (i) **With respect to your treatment of Patient B, you inappropriately applied topical ointment and/or dressings to his penis with your hands which were not gloved;**
 - (ii) **During your examination of Patient B's genitals, you failed to wear gloves;**
 - (iii) **During appointments with Patient B, in the absence of any clinical indication, you unnecessarily took semen samples;**
 - (iv) **During appointments with Patient B when semen samples were taken, you masturbated Patient B and/or observed him engaging in masturbation at your request; and**

- (v) **You inappropriately gave Patient B and his family a gift of a used computer and accessories.**
3. **Between May, 1998 and June, 1998, you engaged in inappropriate conduct with respect to C, a minor. In particular, you did one or more of the following:**
- (a) **You led C's mother to believe that you were involved with a survey affiliated with the IWK Hospital, when the IWK Hospital had no knowledge of or affiliation with such a survey;**
 - (b) **In the context of the alleged survey you inappropriately accessed medical information about various patients at Eastern Shore Memorial Hospital;**
 - (c) **In the context of the alleged survey, you sought the consent of C's mother to weigh and measure C and to test his urine. In the course of your appointment with C you proceeded to conduct an examination of his genitals, which had not been discussed with or consented to by his mother;**
 - (d) **You inappropriately conducted an examination of C's genitals during your initial appointment with him;**
 - (e) **During your examination of C's genitals, you failed to wear gloves;**
 - (f) **You provided a condom to C and suggested he use it while masturbating;**
 - (g) **You provided C's mother and C with two different explanations for the requirement for a second urine sample;**
 - (h) **Despite your alleged concern with the results of C's first urine sample, you failed to refer C for further investigation;**
 - (i) **During the appointment for the second urine sample, you inappropriately conducted a second examination of C's genitals;**
 - (j) **During the appointment for the second urine sample, you inappropriately inquired of C whether he had had an opportunity to use the condom which you had provided to him during the previous appointment.**

AND that in relation to the above, you are alleged to be guilty of professional misconduct and/or incompetence.

On July 25, 2000, by agreement of the parties, one witness testified because of unavailability for the Hearing scheduled for January 2001. As a part of the agreement, the parties had requested that:

- (a) an order be issued to exclude members of the public from the Hearing until the testimony of this witness was received;
- (b) the Hearing Committee issue a publication ban with respect to all activities related to the Hearing until the Hearing resumed in January 2001.

The Hearing Committee granted an order accordingly.

On November 27, 2000, counsel for Dr. Christie made a written request to adjourn the Hearing, which was scheduled to reconvene on January 15, 2001.

The Hearing Committee was advised by counsel for Dr. Christie that a related criminal matter was still in process. The trial had been scheduled for November 2000 but had been adjourned until February. An adjournment was requested until late February or early March 2001.

In response to the request for the adjournment, counsel for the College of Physicians and Surgeons advised the Hearing Committee that there had been an agreement to a previous adjournment made in May 2000. In a letter from Ms. Hickey to counsel for Dr. Christie, dated May 10, 2000, she stated:

Our agreement to delay the balance of the hearing until January, 2001 is not premised in any way on the completion of the criminal charges against Dr. Christie by that date. If the criminal hearing proceeds in the normal course in November, then the evidence should all be

entered by the end of November, 2000, but as noted above, we are not prepared to adjourn our formal Hearing indefinitely in the event there are adjournments of the criminal proceedings or appeals therefrom.

After consideration of the submissions of counsel, the Hearing Committee denied the request for the adjournment.

On January 15, 2001, Marjorie A. Hickey, Q.C., appeared for the College of Physicians and Surgeons of Nova Scotia and Colin J. Clarke appeared for Dr. Michael Christie.

In the absence of Dr. Christie, Mr. Clarke confirmed to the Hearing Committee that Dr. Christie had been informed of the date of the resumption of the Hearing and had received appropriate notification and consented to the continuance of the Hearing. Counsel then asked the Hearing Committee for a ruling to confirm an agreement that the entire Hearing be held in camera due to the sensitive nature of the evidence to be led. A further request was made that a publication ban be put in place for all aspects of the hearing. During the period of the publication ban, Dr. Christie had agreed that he would not engage in the practice of medicine. The publication ban was to be in place until the earliest of the following dates:

- (a) if the criminal trial proceeded, the date when all of the evidence had been presented;
or
- (b) if the criminal trial did not proceed, the date when the criminal charges were dismissed or stayed; or
- (c) March 15, 2001.

Counsel further requested that if, during the period when the ban was in place, Dr. Christie sought to obtain a license with another licensing body, or should otherwise consent to the release of information concerning the status of his license, the College would be free to disclose any

decisions of the Hearing Committee to such other licensing body or others to whom Dr. Christie had given his consent to release that information.

The motion of counsel was granted by the Hearing Committee.

Mr. Clarke then advised the Hearing Committee that Dr. Christie wished to plead guilty to six specified charges and, in addition, to four other charges in a revised form. As part of the guilty plea, Dr. Christie agreed to a finding of professional misconduct based on the charges he pleaded guilty to. In addition, Dr. Christie offered to tender his license to practice medicine, resigned from the practice of medicine, undertook never to practice medicine again and agreed to pay part of the costs up to January 15, 2001.

On behalf of the College, Ms. Hickey opposed the revision of any charges.

The Hearing Committee then advised counsel that it was not prepared to revise any charges. Mr. Clarke confirmed that the guilty plea of Dr. Christie would stand on the following charges:

- 1(a)(iv)
- 1(a)(ix)
- 2(a)(ii)
- 3(a)
- 3(b)
- 3(e)

Counsel then made further submissions on whether the Hearing should proceed with the calling of evidence.

After consideration of the submissions of counsel, the Hearing Committee determined that the College should proceed with its case. Mr. Clarke then advised that he had been instructed to do nothing further to defend the merits of the charges and he departed from the Hearing.

EVIDENCE - PATIENT A

The mother of Patients A and B had known Dr. Christie since she was in her teens and Dr. Christie had delivered two of her children. Dr. Christie had been the family doctor until 1997.

From time to time she had discussed personal matters with Dr. Christie as well as medical matters. He was someone she could talk to and trusted.

In the summer of 1997 Patient A fell and, as a result of being struck on the back of his head, had difficulty concentrating and had a problem with his eyesight. Dr. Christie sent Patient A for tests which came back negative.

Dr. Christie told Patient A's mother that he had no sperm count but that it was normal for boys that age. He said that boys sometimes need something to get them started and that Patient A should have shots once a month and that he could be tested twice a year. He would have to take sperm samples.

In the fall or early winter of 1997 Dr. Christie called the mother of Patient A and asked for Patient A to come to the hospital. A series of visits proceeded. She brought Patient A to the hospital, usually on weekends, and Dr. Christie drove Patient A home. Some of the visits were on weekdays. From January to June 1998 Patient A had needles once a month.

Dr. Christie advised the mother of Patient A that he was consulting with Dr. Auld (a urologist) about the needles and indicated that, after the six shots were given, everything would be normal and Patient A would be able to produce children.

On one occasion Dr. Christie came to the family home and talked to Patient A privately for one-half hour. Patient A told his mother that Dr. Christie asked him to lie down on his bed so that he would examine his penis. Dr. Christie told Patient A that he should have a surgical

procedure carried out on his penis. Dr. Christie later called the mother of Patient A and asked that Patient A come to his office to have the procedure done, but this did not proceed because Patient A was not comfortable about it.

Patient A did not tell his mother about how sperm samples were being obtained by Dr. Christie.

In July 1998 Dr. Christie gave the family a used computer. He advised the mother of Patients A and B that he was getting a new computer and instead of throwing out his old one, he wanted to give it to this family. He told her not to tell anyone he was giving the computer to them.

In the spring of 1998 Dr. Christie had offered to pay for Patient A's karate lessons when he learned the family could not pay for them. This offer was not accepted.

Patient A had known Dr. Christie as long as he could remember. He had seen Dr. Christie after he had a fall which impaired a few of his motor functions. He expressed his concerns to Dr. Christie and Dr. Christie gave him a physical examination, took blood samples and checked his eyes.

The physical examination had included all of his body, including the genital area. Dr. Christie took a swab and a urine sample.

Patient A visited Dr. Christie about a week after the examination. Dr. Christie told him that there was no problem with the blood tests and he didn't know what was wrong. He stated that he had spoken to another doctor and that there could be a hormone problem or a sperm count problem.

Dr. Christie told Patient A that he wished to collect a sperm sample to determine whether the sperm count was low. He would then consider injecting a medication which contained hormones and vitamins which would “jump start” the system.

When Dr. Christie told Patient A that he needed to produce a sperm sample, Patient A felt uncomfortable. Dr. Christie asked Patient A to place himself on an examination table and pull his pants down to his knees. Dr. Christie then carried out masturbation on Patient A. Dr. Christie used two fingers and a thumb and then transferred the sperm to a specimen bottle. Dr. Christie told him that, by the look of the sperm, the sperm count was okay.

Dr. Christie and Patient A then proceeded to the lab to view the sample under a microscope. Dr. Christie prepared the slide and asked Patient A to look at this slide as well as the slide of another person’s sperm sample. Patient A saw sperm in the other sample and none in his.

Dr. Christie then talked about treatment and told Patient A that he proposed to give him six shots over a period of six months. There was no injection on this visit.

The next time Patient A came to Dr. Christie’s office, he again provided a sperm sample. Then Dr. Christie gave an injection. A second sperm sample was given on the same visit with the assistance of Dr. Christie.

On subsequent visits the same process was followed. Patient A gave a semen sample, received an injection and then produced a second semen sample. On a few occasions Patient A started the masturbation but Dr. Christie either completed the masturbation or did it solely on most occasions.

There were discussions between Dr. Christie and Patient A about pornography during visits. Dr. Christie had asked Patient A if he had ever seen pornography on television. When Patient

A said "yes" to the question, Dr. Christie told him to think about these shows while Dr. Christie was producing the sperm samples.

On one occasion Dr. Christie asked Patient A if he had used a condom and Patient A said "no". Dr. Christie then produced a condom and showed him how to use it by putting it on Patient "A".

A few months after the last of the six injections had been given, Dr. Christie asked Patient A to come in to provide another sample and Patient A did so. Dr. Christie told him that his sperm count had gone down. Another series of four injections was given.

Dr. Christie told Patient A to carry out regular masturbation. Patient A had the impression that one sperm sample from each session was to be sent away for testing.

Dr. Christie advised Patient A that he should not talk to other people about what was going on. He told him not to talk to peers and other people about his sperm count because it was a private matter.

Dr. Christie had asked Patient A if he had sex before and Dr. Christie talked to Patient A about how to have sex. Patient A felt very uncomfortable with this discussion.

Patient A recalled an occasion when Dr. Christie had come to his home. Dr. Christie and Patient A went to a bedroom and Dr. Christie asked him to take down his pants so that he could examine his genitals. Dr. Christie told Patient A that he should have a certain surgical procedure but Patient A did not agree.

On one occasion Dr. Christie had come to the family home and asked if Patient A wanted a computer. Patient A said that he did and later Dr. Christie brought the computer to the house and helped put the system together.

When asked whether he had any concerns about the treatment he received from Dr. Christie, Patient A stated that he had not questioned what was going on at the time. He said "I trusted him".

Patient A did not talk to anyone about what had taken place until much later when he talked to a youth worker and then told his mother what had taken place.

EVIDENCE - PATIENT B

The mother of Patient B stated that when Patient B was 13, in the fall of 1997, he complained about a sore penis. She took her son to see Dr. Christie.

Dr. Christie said that he would try a pill, plus use of a cream for an infection and bandages as a dressing. Patient B told his mother that he used the pill and applied the cream but that he was still sore.

After a few weeks, she took Patient B back to Dr. Christie. He told her that dressings should be applied, and every two to three days, Patient B went to his office after school for sessions lasting 45 minutes to an hour. Patient B's mother drove her son to the office and Dr. Christie drove him home.

When Patient B's condition did not seem to be getting better, she spoke to Dr. Christie and asked him if the condition would get better. Eventually Dr. Christie said he wanted to try one additional thing and gave Patient B a needle. Patient B was not comfortable with this and no needle was given.

The condition of Patient B seemed to get better and then worsened. The visits to Dr. Christie took place from the fall of 1997 until the spring of 1998. Dr. Christie advised Patient B's mother that he had been consulting with Dr. Auld on the matter.

The mother of Patient B took Patient B to another doctor. His problem was cleared up.

She later reported the matter to third parties.

In due course Patient B had blood work and the new doctor advised that the problem would clear up and it did.

The mother of Patients A and B had started to become suspicious prior to the summer of 1998.

When matters were dragging on with Patient B, she talked to a few people about the matter and a report was subsequently made to the R.C.M.P.

Patient B recalled that he had an irritation on his penis and that he went to see Dr. Christie. Dr. Christie carried out an examination as Patient B was lying on a table with his pants down. Dr. Christie examined his penis and was not wearing gloves.

Following the physical examination, Dr. Christie gave Patient B a prescription for a cream and told Patient B to apply the cream twice a day. Patient B followed this advice.

Patient B returned to see Dr. Christie and believed that the infection was getting better. Dr. Christie examined him and Dr. Christie applied the cream on the second visit.

In the following year, Patient B returned to Dr. Christie when he had a further irritation. The first irritation had almost gone away, but a new irritation developed which was worse than the first one. Patient B was suffering from pain and discomfort.

Dr. Christie examined Patient B and told him that it would be better to apply the cream when his penis was erect. Dr. Christie used his two fingers and thumb to make Patient B erect. Dr. Christie did not ask Patient B to try and make himself erect.

Patient B recalled that Dr. Christie wanted a sperm sample on one visit. Dr. Christie used his fingers to make Patient B erect and proceeded to masturbate him.

There were three sets of visits. Dr. Christie took sperm samples twice during the second set of visits and almost every week during the third set of visits.

Patient B observed that Dr. Christie placed the sperm in a small bottle. He understood that the samples would be sent away. Dr. Christie did not report any results to him

On one occasion Dr. Christie took Patient B to his lab and put the sample under a microscope and invited Patient B to look at it. Dr. Christie told Patient B that there was something in his sperm that was not supposed to be there. Patient B was not asked to give more than one sperm sample at any one visit.

Patient B described the third set of visits after he told his mother about the problem. On these occasions Dr. Christie would take Patient B's pants down to his knees and then apply the cream with two fingers and a thumb. Dr. Christie asked him to provide a sperm sample about once a week.

Dr. Christie did not give Patient B any reports about the samples and never told him what was wrong.

During the third set of visits, Dr. Christie did not suggest that Patient B apply the cream himself until a time when Dr. Christie was going on vacation.

When asked if he ever thought that anything was wrong on any of his visits to Dr. Christie, Patient B said "no". He said that Dr. Christie had been his doctor since birth and that he trusted him.

When Patient B eventually saw another doctor about his problem, this doctor wore gloves when examining him.

ADDITIONAL EVIDENCE RELATING TO PATIENTS A & B

Jean Cooper worked for Dr. Christie from February 1997 until December 1999. She made appointments for patients to see Dr. Christie, made appointments for referrals to specialists, took out patient charts and answered the telephone. Each day she provided Dr. Christie with an appointment sheet and the relevant charts. When patients came to the office without an appointment, she worked them into the schedule.

Ms. Cooper was asked to account for nine M.S.I. billings for Patient A and 24 M.S.I. billings for Patient B where there were no matching appointments in the daily appointment book (Exhibit # 4 - Tab #3). She could not do so. She stated that, typically, the M.S.I. billings would mirror the appointments in the book.

Cathryn MacAvoy was the Lab and EKG Manager at the Eastern Shore Memorial Hospital for 21 years.

She stated that she has not done semen analyses and such analyses are not offered by their lab. She was aware that Dr. Christie looked at semen samples which he brought into the lab and that he used her microscope.

Usually a patient would have to go to a hospital which tested sperm counts and she referred to the Pathology Lab at the QEII. The paperwork included a computer record and a

requisition with the referring doctor's signature which would remain at the hospital. A report would come back from the QEII, receive a date stamp and then be recorded in the computer.

There were no records with regard to semen samples and tests relating to Patient A or Patient B.

Ms. MacAvoy was also asked about urine tests. The individual doctors in the hospital did some urine testing and there would not necessarily be any paper record. If there was a problem the individual physician would ask her to look at the sample which would then be sent out to another hospital. In such a case a report would be generated.

Dr. Brewer Auld is a urologist and has done adult urology in Halifax since 1979. He stated that he was almost never involved in dealing with patients under 16 years of age.

Dr. Auld saw a number of adult patients referred by Dr. Christie. In these cases Dr. Christie provided good information. On rare occasions he spoke to Dr. Christie.

Dr. Auld had no records with respect to Patient A and Patient B in 1997 or 1998. He had no recollection of seeing either of them or ever talking about them to anyone.

Dr. Auld had no recollection of talking to Dr. Christie about a sperm count of a 16 year old boy or of B-12 injections. He would have referred such a matter to someone else. He questioned the appropriateness of such a treatment and questioned why a physician would be interested in the sperm count of a 16 year old. He had never heard of a B-12 injection being used for this treatment. When asked about the irritation or rash, he questioned why the penis would have to be erect for the application of cream and why semen samples would have been required. He was not a party to any discussions about the problems of Patient A and Patient B in 1997, 1998 or at any time.

Dr. Auld was asked about his use of gloves. When examining genitals on which there is a rash or lesion, he always uses gloves. For examination of external genitals, he would not otherwise wear gloves.

Dr. Auld did not remember seeing Dr. Christie since he entered the field of urology.

EVIDENCE - PATIENT C

The mother of Patient C had known Dr. Christie for more than 20 years. Their families resided in the same small community of Sheet Harbour and Dr. Christie had delivered several of her children. The families had socialized. The family doctor had been changed to another individual prior to 1998.

In the spring of 1998 Dr. Christie called the mother of Patient C and stated that he had been approached by the IWK Hospital to do a survey on boys he had circumcised prior to 1989. Dr. Christie wanted to know if Patient C would take part in the survey. The parents and Patient C consented.

A few days after the initial contact Dr. Christie came to the home of Patient C and stated that he was doing a survey for the IWK Hospital. He indicated that only a few pediatricians were doing circumcisions at birth and the IWK found that having to do circumcisions on boys at five or six years of age resulted in higher costs. He asked a series of questions and the mother of Patient C provided answers. Dr. Christie said that he wished to take Patient C to the hospital at Sheet Harbour in order to take his weight and height and to do a urinalysis. Patient C agreed and went to the hospital with Dr. Christie.

The next week Dr. Christie called the family home again and stated that there was not enough "pee" in the sample to do a urinalysis and the mother agreed to allow Patient C to go again to the hospital with Dr. Christie.

There was no discussion between Patient C and his mother about the matter after the second visit to the hospital. Dr. Christie had indicated to the mother that approximately 90 boys were involved in the survey and that Patient C was one of the last 12 to 15 boys to be surveyed.

The mother of Patient C did not question Dr. Christie at length because he had delivered most of the babies in Sheet Harbour. Dr. Christie did not indicate to her at any time that he would be examining her son's genitals.

Patient C is an 18-year old high school graduate. He was an above average student involved in sports and other extracurricular activities.

Patient C stated that he had known Dr. Christie his entire life and that Dr. Christie had delivered him. For a period of two to three years he saw Dr. Christie frequently while he participated in one of his outside activities. Up until 1998 he considered Dr. Christie to be a friend.

In the spring of 1998, when Patient C was 15, his mother told him that Dr. Christie was doing a survey on boys who had been circumcised by him. She indicated that the tests would include taking his height, weight and a urine sample.

Dr. Christie came to the home and picked up Patient C and took him to the hospital. They entered a back door of the hospital after regular hours. No one else was around.

After Dr. Christie and Patient C entered the office, Dr. Christie asked Patient C to provide a urine sample. He directed Patient C to a bathroom with a green jug and Patient C returned with a sample. Dr. Christie put a paper into the urine.

Dr. Christie told Patient C that he would be testing 15 additional boys. He also stated that in his view circumcision was fine.

Patient C saw a paper in Dr. Christie's office with a list of boys' names. He recognized one of the names as someone he had taken classes with.

Dr. Christie then asked Patient C to lie down on a table and take his pants off so that Dr. Christie could do an examination. Patient C said that he moaned but complied and lay down on the table with his pants down.

Dr. Christie touched the head of the penis, the rest of the penis and then while gripping the penis he moved the testicles with his fingers and touched the area behind the testicles. There was no caressing. Patient C then put his underwear back on.

Patient C said that he felt very awkward during the examination particularly when Dr. Christie touched the shaft of his penis and his testicles.

Following the examination Dr. Christie brought out a condom, held it up and asked Patient C if he had ever used one. Patient C said "no". He then asked if Patient C ever had sexual relations and the same answer was given.

Dr. Christie told Patient C that the condom was a special one for men who were circumcised and that Patient C could use it the next time he "wacked off". Dr. Christie said that the end of the condom would catch the semen.

Patient C stated that Dr. Christie did not have gloves on during the physical examination.

Patient C put the condom in his pocket and Dr. Christie drove him home. He could not recall whether Dr. Christie had taken his height and his weight.

The second event occurred about a week later. Dr. Christie picked up Patient C and they entered the rear of the hospital after regular hours. No one else was around. Patient C understood that the first urine sample was not adequate. Dr. Christie told Patient C that he required another urine sample because when he sent away the first sample, a report had come back indicating that there was something wrong.

Patient C provided a urine sample which was again tested by Dr. Christie with a paper which had blocks on it.

Dr. Christie then conducted a physical examination. He felt the head of Patient C's penis, opened it and referred to a possible blockage. Patient C referred to a diagram (Tab #8 of Exhibit #1) and explained how Dr. Christie gripped his penis and moved his testicles. He pinched hard and put pressure on these areas. This examination took longer than the first time. Dr. Christie pulled up the underwear of Patient C and said "all done ... you are fine".

Patient C stated that no other parts of his body were examined on either occasion.

Dr. Christie asked Patient C if he had used the condom. Patient C said "no". Dr. Christie told Patient C that it was all right if he masturbated.

Patient C did not have any further medical contact with Dr. Christie. He did see Dr. Christie from time to time and on two occasions Dr. Christie asked him to go with him to a family cottage. Dr. Christie also asked Patient C to come to his home and listen to records. Patient C did not accept these invitations.

Patient C did not describe the two examinations to anyone until his mother told him that Dr. Christie had been charged with sexual assault by two boys.

Beverly Smith is the Manager of the Health Records Department at the Eastern Shore Memorial Hospital at Sheet Harbour and had been employed at the hospital for 30 years. Records can come from anywhere in the facility and these records are maintained completely separately from records kept by individual doctors.

When asked about urinalyses, Ms. Smith stated that such tests are normally done by patients presenting themselves at the lab. However, at times physicians would get a patient to leave a sample in the physician's office. In such a case a report would not be generated back to medical records. Ms. Smith was shown Tab #3 of Exhibit #3. This tab contained all of the records of Patient C which had been generated at this hospital. There was no record of any urinalyses done by Dr. Christie in the spring of 1998, although there was a subsequent urinalysis done by another physician.

Ms. Smith recalled being approached in 1997 or 1998 by Dr. Christie regarding certain hospital records. He asked her for a record of births so he could check on the number of circumcisions he had done on his patients at birth. She took a sheet of paper and recorded the dates of deliveries and names of Dr. Christie's patients who had been circumcised. She did not give copies of any original records to Dr. Christie. Ms. Smith identified the document under Tab #5 of Exhibit #1 as the list she had provided to Dr. Christie. This list contained the names of 16 boys, including Patient C. Ms. Smith had written down birth dates opposite each of the names.

When asked if Dr. Christie had referred to the accreditation process when requesting the records, Ms. Smith answered "no". She had been a member of the Quality Assurance Committee for several years and was quite familiar with the accreditation process.

Ms. Smith further indicated that the list she prepared included all of the circumcisions done by Dr. Christie from 1978 up to 1987. At the time she did not consider Dr. Christie's request for the information unusual or inappropriate.

Ms. Sheila Martin is an Administrator at the Eastern Shore Memorial Hospital. She has been Health Facilities Manager since January of 1998. She is responsible for the overall daily running of the facility, including clinical services, medical services and nursing.

The hospital is a 20-bed facility which primarily provides acute care services. There are also outpatient services. In 1997 and 1998 there were three physicians on staff, including, Dr. Michael Christie. All doctors had offices and they saw patients who were not necessarily connected with the hospital.

Ms. Martin was asked if it was common for any of the physicians to become involved in research projects. She said that, other than paper reviews done for auditing and statistical purposes, it was not common for their physicians to be involved in research projects. The word "research" implies client contact. She stated that she was not aware of any audits or research projects in 1997, 1998 or 1999 being done in relation to circumcision. The only audit she recalled during this time period was a survey being handed to all patients which asked about the satisfaction received from services provided at the hospital.

Ms. Martin was asked whether there was any approved mechanism for research projects. She stated that there is a Quality Management Committee which would discuss projects and make decisions regarding the appropriateness of a proposal. Any such proposal would ultimately require the approval of a Board. If a proposal had come forward regarding circumcision, there would have been a very detailed process which would deal with concern that clients would have to be protected. The Board would have to consider whether the end results would benefit either the client or the general population. She was never advised by Dr. Christie that he wished to embark on such a project.

Dr. Bradley Atkinson has worked at the Eastern Shore Memorial Hospital for nine years and has been Chief of Staff for the past four years.

Dr. Atkinson was approached by the parents of Patient C regarding Dr. Christie. They asked him to look into the events relating to the spring of 1998.

Dr. Atkinson approached Dr. Christie and asked about a study related to circumcision. Dr. Christie stated that he was doing a study under the auspices of Dr. Peter Anderson connected with the IWK and the QEII Hospitals. Dr. Atkinson then approached Dr. Peter Anderson who denied any knowledge of the matter. Dr. Atkinson then reported back to the parents of Patient C.

Dr. Atkinson stated that if a study was being done for accreditation, he would expect to be aware of it. He was the doctor of Patient C in 1998 and had not been approached by Dr. Christie.

Dr. Peter Anderson is a Pediatric Urologist and has been at the I.W.K. Hospital since 1990. Dr. Anderson stated that he had received referrals from Dr. Michael Christie from time to time but had no direct contact with him. He had no involvement with any survey related to circumcision. He confirmed that he had received a telephone call from Dr. Atkinson calling as Chief of Staff of the Eastern Shore Memorial Hospital. When Dr. Atkinson asked him about the survey regarding circumcision, he told Dr. Atkinson that he has no idea what he was talking about. There was no such study being conducted out of the I.W.K. Hospital. He has never spoken to Dr. Christie.

EVIDENCE RELATING TO PATIENTS A, B & C

The College of Physicians and Surgeons of Nova Scotia obtained written reports from four individuals. The opinions of these individuals were accepted by the Hearing Committee as expert testimony.

Dr Richard MacLachlan is a professor and Head of the Department of Family Medicine at Dalhousie University. He explained the protocol for obtaining and examining semen samples. Based upon the facts related to him, he concluded that Patients A and B had subjected

themselves to manoeuvres that were put forward as part of clinical practice and that, in his opinion, had no professional basis.

Dr. Michael Reardon is a dermatologist and was asked to provide opinions on the wearing of gloves while conducting physical examinations and the application of cream to the genital area of a 13 or 14 year old boy. He stated that accepted practice for direct examination or treatment of mucus membranes would be in circumstances where the physician would be wearing gloves. Generally, prescribed creams are applied by the patient. He was of the view that the treatment of Patient B was inappropriate for the particular skin problem and may have contributed to the perpetuation of the problem.

Dr. Reardon also commented on the use of dressings for Patient B. In his experience, it was not common to apply Sofra-Tulle dressings to the genital area of a male except under special circumstances which did not exist here. If it was necessary to apply such dressings, it would be appropriate for the person applying the treatment to wear gloves.

Dr. John Grantmyre is a urologist with special knowledge and experience relating to male infertility. He was asked about the clinical indications, if any, for taking semen samples from a 15 or 16 year old boy. He was not aware of any clinical indications for obtaining a semen sample from Patient A.

Dr. Grantmyre described the standard methods for collection of semen samples and stated that he did not know of any circumstances where it would be necessary or beneficial to take more than one semen sample during a single visit to a physician. He also stated that it is never appropriate for a physician to directly observe a patient providing a sample. There are no circumstances where a physician should become directly involved in masturbating a patient to obtain a semen sample.

Dr. Grantmyre was asked about the appropriateness of administering Vitamin B-12 injections as a method to treat alleged low sperm counts in an adolescent male. He stated that this was not an accepted treatment for an unexplained low sperm count.

With respect to Patient B, Dr. Grantmyre knew of no reason why this patient would need to have the dressings and ointment applied for him. If it was absolutely necessary, gloves should have been worn. Given the nature of the infection, there were no indications present to warrant the taking of semen samples. With the persistence of the problem, a referral to either a urologist or a dermatologist would have been appropriate.

Dr. Philip Klassen is the Head, Phallometric Laboratory, Sexual Behaviours Clinic at the Centre for Addiction and Mental Health in Toronto. He was asked by the College of Physicians and Surgeons of Nova Scotia to provide a psychiatric and sexological opinion of Dr. Christie based upon his review of information related to Patients A, B and C.

Dr. Klassen pointed out that he did not have the opportunity to examine Dr. Christie in any manner and accordingly was not in a position to offer any firm or unequivocal diagnosis with regard to Dr. Christie. However, he did provide his psychiatric impressions.

Dr. Klassen stated that the information he reviewed was consistent with Dr. Christie suffering from a paraphilia (form of sexual deviance). Specifically the allegations were consistent with Dr. Christie suffering from hebephilia or ephebephilia. Pedophilia is a sexual preference for pre-pubescent individuals. Hebephilia is a sexual preference for pubescent individuals. Ebhebephilia is a sexual preference for immediately post-pubescent individuals. Once extant, paraphilias are present life long. In his opinion the allegations, if proven, were consistent with an inappropriate age preference. He could think of no other compelling diagnosis, explanations or motivations for the alleged behaviour.

Dr. Klassen referred to the circumstances of Patients A, B and C and stated that the information was consistent with an individual with an inappropriate age preference engaging in exploitive behaviour with a victim. Dr. Christie also presented in a relatively typical fashion as regards professionals who commit boundary violations.

THE RESPONSE OF DR. CHRISTIE

In the absence of any testimony from Dr. Christie, the only evidence of Dr. Christie's position available to the Hearing Committee consisted of his written responses to the College of Physicians and Surgeons to the complaints related to the three patients.

In his letter of response with respect to Patients A and B, Dr. Christie set out an account of his dealings with the two boys and took the position that the dealings were strictly professional. He denied the allegations and stated that he had fully explained everything to the parents of the boys.

In his letter of response relating to Patient C, Dr. Christie stated that he had decided he should undertake a project in a positive effort to assist the hospital in the expectation of an accreditation process. He obtained the list of names of boys who had been circumcised at the hospital and contacted the mother of Patient C. He denied that there was any inappropriate purpose in the examination of Patient C.

FINDINGS

Having regard to the seriousness of the allegations, the Hearing Committee must be reasonably satisfied that the alleged facts occurred. This depends on the totality of the circumstances, including the nature and consequences of the facts to be proved and the gravity of the consequences that would flow from a particular finding.

The burden is on the College of Physicians and Surgeons to prove the allegations by clear and convincing evidence.

Dr. Christie elected not to attend the hearing.

The following principle has been taken into account by the Hearing Committee.

In circumstances where the evidence presented by the professional organization has established a *prima facie* case, the failure of the professional to testify may result in the drawing of an adverse inference against the professional by the discipline tribunal. (*The Regulation of Professions in Canada* - James Casey at page 11-18)

PATIENT A

The Hearing Committee concluded that the following charges have been proved with respect to Patient A:

- 1(a)(i)
- 1(a)(ii)
- 1(a)(iii) - delete the word "or"
- 1(a)(iv)
- 1(a)(v)
- 1(a)(vi) - delete the word "or"
- 1(a)(vii)
- 1(a)(viii)

The College of Physicians and Surgeons of Nova Scotia withdrew Charge 1(a)(ix) which referred to the failure of Dr. Christie to wear gloves.

Charges 1(a)(x) and 1(a)(xi) dealt with the gift of a used computer with accessories and the offer to pay for an extra-curricular activity. The Hearing Committee was not satisfied that Dr. Christie's actions in this regard were motivated by factors other than his goodwill, although the timing was suspect. We therefore dismiss these allegations.

PATIENT B

The Hearing Committee has concluded that the following charges have been proved with respect to Patient B:

- 2(a)(i) - delete the word "or"
- 2(a)(ii)
- 2(a)(iii)

The first portion of Charge 2(a)(iv), which reads as stated below, was also proved.

During appointments with Patient B, when semen samples were taken, you masturbated Patient B.

The remaining allegation in Charge 2(a)(iv) is dismissed. Charge 2(a)(v), relating to the gift of a used computer and accessories, is dismissed for the reasons stated above.

PATIENT C

The Hearing Committee has concluded that the following charges have been proved with respect to Patient C:

- 3 (a)
- 3 (b)
- 3 (c)
- 3 (d)
- 3 (f)
- 3 (g)
- 3 (i)
- 3 (j)

The College of Physicians and Surgeons of Nova Scotia withdrew Charges 3(e) and 3(h) at the conclusion of the hearing. Although the Hearing Committee has made a finding against Dr. Christie with respect to his accessing medical information about various patients, this finding was based strictly on the allegation of a survey which this Hearing Committee concluded was a sham. Dr.

Christie intentionally misled hospital staff in relation to the purpose for which he sought the records. Therefore his request for access to these records was inappropriate in these circumstances.

The Hearing Committee finds that the proved allegations against Dr. Christie amount to professional misconduct with respect to each of Patients A, B and C.

PENALTY

The Hearing Committee had little difficulty in concluding that the actions of Dr. Michael Christie were reprehensible and directly reflected upon his professional integrity. In our view protection of the public interest required the imposition of the most severe sanction. We were unaware of any mitigating circumstances.

We therefore order that the license of Dr. Michael Christie to practice medicine in Nova Scotia be revoked in accordance with the provisions of the *Medical Act*, S.N.S., 1995-96, c 10.

COSTS

Counsel for the College of Physicians and Surgeons of Nova Scotia introduced Exhibit #9 which sets out the costs for the hearing which totalled \$102,251.75. No costs were claimed for the investigation of the complaints.

On behalf of the College, counsel submitted that there were a number of factors which supported a very substantial award of costs in this case. Reference was made to *Jaswal v. Medical Board (Newfoundland)* 1996 CarswellNfld 32, 42 Admin. L.R. (2d) 233, wherein the Court provided a non-exhaustive list of factors to be taken into account before imposing an order for payment of expenses at page 14:

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.

Ms. Hickey provided letters outlining the procedural history of this matter, including requests for delays, discussions relating to possible admissions, the positions taken by Dr. Christie and the late notice (January 2001) received by the College concerning the position that would be taken on behalf of Dr. Christie when the hearing proceeded. She submitted that until January 2, 2001, the College had to attempt to anticipate what defence would be put forward by Dr. Christie and it could only do so on the basis of the responses to the complaints which had been filed by Dr. Christie.

Ms. Hickey submitted that it would be reasonable for the College to award Seventy-five Percent (75%) of the costs incurred by the College.

Mr. Colin Clarke appeared for Dr. Christie on the issue of costs. He submitted that the College was seeking more than \$75,000.00 for what amounted to three days of hearings. He did not dispute that preparation time was required.

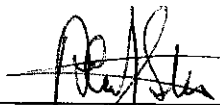
Mr. Clarke submitted that the Hearing Committee had to determine whether all of the information and witnesses who were put forward were necessary in the circumstances. He also

pointed out that some allegations were withdrawn or dismissed. He also referred to the financial circumstances of Dr. Christie but no evidence relating to these circumstances was provided to the Hearing Committee.

Mr. Clarke referred to *Jaswal* wherein the court had reduced an order of a hearing committee from \$20,000.00 to \$12,000.00 and *Brand v. College of Physicians and Surgeons of Saskatchewan* (Sask. C.A.) (1990) 72 D.L.R. (4th) 446. In that case the Court of Appeal found that an award of \$12,177.00 for a hearing of three days was unreasonable and remitted the cost issue back to court for reassessment.

In our view all of the evidence that was put forward on behalf of the College of Physicians and Surgeons of Nova Scotia was necessary. The allegations were extremely serious and the Hearing Committee required the relevant information in order to gain a proper understanding of what had taken place.

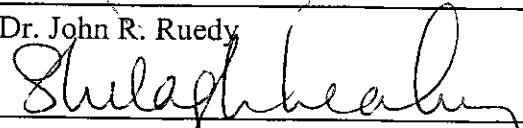
After careful consideration of all of the circumstances, the Hearing Committee has concluded that an award of costs against Dr. Christie in the amount of Seventy-five Thousand Dollars (\$75,000.00) is appropriate. We therefore order that Dr. Christie pay this sum to the College of Physicians and Surgeons of Nova Scotia on or before October 31, 2001.



Alan J. Stern, Q.C., Chair



Dr. John R. Ruedy



Dr. Shelagh Leahy



Gwen Haliburton



Dr. Robert N. Anderson

