

IN THE MATTER OF THE COLLEGE OF PHARMACISTS OF BRITISH COLUMBIA

AND

ALI ASGHAR LAAL

**Decision on hearing of Citation by the College of Pharmacists
(Michael MacDougall, Chair, Barbara Stipp, Peter Cook)**

Hearing Date:	April 22 - 25, 2013
Counsel for the College of Pharmacists of BC:	Catherine Herb-Kelly, Q.C.
Counsel for Mr. Laal:	No one appearing
Counsel for the Discipline Committee:	Maureen Baird, Q.C.

1. A hearing panel of the Discipline Committee (the panel) was convened to hear the Citation issued by the College of Pharmacists of British Columbia (the “College”) on April 19, 2011 (the “Citation”).

Introduction

2. Mr. Laal did not appear at the commencement of the hearing on April 22, 2013. The panel were advised by counsel for the College that Mr. Laal had been represented by counsel until April 5, 2013. On that date she had received an email from Mr. Laal’s counsel advising that he was withdrawing and that Mr. Laal did not propose to appear at the hearing.

3. The panel was advised that on April 15, 2013 counsel for the College had sent both a letter and an email to Mr. Laal at the addresses on record with the College advising Mr. Laal of the change of venue. No response was received by counsel for the College to either of those communications.

4. The panel waited until 09:45am to commence the hearing to ensure that Mr. Laal was not simply late. He did not appear on any of the 4 days of the hearing.

5. The panel was referred to section 38(5) of the *Health Professions Act* (the “Act”) which permits a hearing to proceed in the absence of the registrant on proof of receipt of the citation by the respondent. The panel notes that on December 1, 2011 Mr. Laal made an application to have the citation in this matter dismissed as a nullity. It was established at that hearing that the citation dated April 19, 2011 (the “Citation”) was served on Mr. Laal on April 29, 2011. Accordingly, the hearing proceeded at 09:45am.

6. At the commencement of the hearing counsel for the College advised that the allegation at Part B, paragraph 1(c) of the Citation was being withdrawn.

Background of Mr. Laal

7. Mr. Laal was born on April 1, 1959.

8. Mr. Laal first became a registrant of the College on July 2, 2000 following graduation from the University of British Columbia in 2000 with a BSc (Pharm). He was at all material times a full registrant of the College. He was suspended by the Inquiry Committee of the College on July 18, 2009 when the College was informed by the police of some of the matters that are the subject of the Citation. He was reinstated to full registration on November 23, 2009 with practice restrictions imposed by the Inquiry Committee.

9. Mr. Laal practised pharmacy in Victoria. In late 2003, Mr. Laal applied to the College for a new pharmacy license for Pharm Aesthetics People's Compounding Pharmacy at 3960 Quadra Street in Victoria. He provided to the College diagrams of the proposed pharmacy for approval. Those plans were ultimately approved. In April, 2007 the chief operating name of the pharmacy was changed to Pharmaesthetics Compounding Pharmacy ("Pharmaesthetics"). After the 2003 request for approval of diagrams for the pharmacy no further changes to the premises were submitted to the College for approval.

10. Mr. Laal was also the owner/manager of People's Pharmacy located at 890 H Esquimalt Road, Victoria, BC.

11. The panel was not provided with Mr. Laal's registration status at the time of the hearing.

Standard of Proof

12. The panel was advised by counsel for the College that the standard of proof to be applied in determining whether the allegations against Mr. Laal have been proved, is the civil standard of a balance of probabilities (*F.H. McDougall* [2008] 3 S.S.C.R. 41). In applying that standard, the panel was advised that it should consider whether the evidence it had received was clear, convincing and cogent. In considering and weighing the evidence before it, the panel has applied this standard of proof.

THE CITATION

Part A – Paragraph 1 – Ms. S.G.

13. Part A – Paragraph 1 alleges:

Between December 1, 2007 and January 31, 2008 you engaged in an inappropriate personal relationship that included having sexual relations with a patient, Ms. S.G.

Evidence

14. There were two witnesses called in respect of this allegation in the Citation, Ms. S.G. and her daughter Ms. K.J.

15. Ms. K.J. is now 25 years of age. She is currently working as a receptionist and taking upgrading courses to eventually become a nurse. She resides with her mother in Victoria.

16. She said that in 2007 her pharmacist was Mr. Ali Laal. He had been her pharmacist since she had been seeing Dr. [REDACTED] who had been her family doctor since 2006.

17. In December, 2007 she said that she needed to have her prescription for birth control renewed and that it was urgent. She said she asked her mother to call in and pick up the prescription since she was at work. She believed it was a Wednesday but it could have been Friday. She identified a picture of the birth control pills dispensed as being those she had asked her mother to order and pick up for her. She said that the date of December 12, 2007 on the picture was correct.

18. She gave evidence that on January 10, 2008 in the evening hours when it was dark out, she believed between 8pm and 9pm, she was at her mother's house where she resided. She said that the telephone rang and she saw on the call display that it was a call from Mr. Laal's pharmacy. Neither she nor her mother answered the telephone. The call sent her mother into a panic. Ms. K.J. went to have a bath. About 10 minutes later the doorbell rang. Ms. K.J. got out of the bath and put on a towel. She saw a car in the driveway. She saw Mr. Laal peering through the glass in the front door. She recognized him and told her mother, who was working in the garage, that he was at the door. Her mother panicked again. Ms. K.J. said she waited with her mother in the garage until he left. She testified that by the time she returned to the bath Mr. Laal had telephoned again although she said she did not hear the call or see the call display at the time. Later she heard the voice mail message that he had left and checked the call display history.

19. Ms. S.G. is now 49 years old. She was born and raised in Victoria. She has married and divorced two times. She has been living at her current address for the past 12 years. She has 3 children all of whom currently live with her. She said she was presently working as a care giver for an elderly man with dementia. Her family doctor is Dr. [REDACTED]. Between 2007 and 2008 Mr. Laal was her pharmacist. She had her prescriptions filled at Pharmaesthetics.

20. In 2007 and 2008 she described her health as being very bad. She was diagnosed at age 35 with Graves disease for which she had radiation. In the Fall of 2007 she had to quit work as a result of a bleeding ulcer. Also, she was experiencing panic attacks and was on medication for both depression and severe back pain.

21. On December 12, 2007, which she recalled to be a Friday, her daughter Ms. K.J. called her. Ms. K.J. was at work but needed to have her birth control pill prescription refilled. She said that she called in the prescription to Pharmaesthetics and Mr. Laal engaged her in conversation along the lines of what she was doing that evening. She said that she had intended to pick up the prescription but she realized that she had no vehicle because her son had taken it. She told Mr. Laal that she did not have a vehicle because she knew that the pharmacy would sometimes deliver.

22. She said that during the conversation Mr. Laal invited her to join him at a local pub called the "Monkey Tree" which was quite close to where she lived. He had mentioned to her on occasions when she was in the pharmacy that he and his brother went to this pub on Friday evenings after work. She was alone at home and thought that there was no reason why she should not join Mr. Laal and his brother at this neighbourhood pub for a drink and so she agreed to go.

23. When Mr. Laal got to Ms. S.G.'s house he said that they would not be going to the Monkey Tree pub because it was too noisy and crowded. They discussed options and eventually went to the Fireside Bar and Grill which was also close to Ms. S.G.'s home. They arrived at the Fireside Bar and Grill between 5:00pm and 5:45pm. She said that the hostess told them that there was a Christmas party group coming in and so they could only stay for an hour. She said that she was taken aback by the fact that Mr. Laal was rude to the hostess when she informed them of this time limitation.

24. They ordered alcoholic drinks. She had a crantini type drink and his was a martini. They finished their first drinks and Ms. S.G. went to the washroom. When she returned from the washroom there was a second round of the same drinks at their table. She said that Mr. Laal told her that he had paid for the drinks. During their conversation Mr. Laal told her that he was separated from his wife but that he had his two children with him. They finished their drinks and left the Fireside Bar and Grill after about an hour.

25. Ms. S.G. testified that after leaving the Fireside Bar and Grill they drove past her house rather than stopping. He told her that he had to check something at the pharmacy. He told her that he thought that he had forgotten to turn the alarm on. When they got to the pharmacy, he parked in front and got out, opened the pharmacy door and went behind the door, she assumed to arm the alarm. Ms. S.G. stayed in the car. Mr. Laal then asked her to come into the pharmacy. Mr. Laal said he wanted to show her something on the computer in the office at the back of the pharmacy. She said he showed her a picture of a house on Land's End Road which he said he was either going to buy or was interested in buying. She remembered that street name because her grandparents had lived on it.

26. When she was shown photographs of the pharmacy's interior, she identified the back office of Pharmaesthetics but noted that there had been some changes since she had been there, in particular she recalled a brown leather sofa whereas the photograph she was shown had a cloth floral sofa. She also said that the desk and its placement were different than she recalled.

27. She said that during the evening she had not been able to sit still for long because she had a lot of back pain. She testified that Mr. Laal said words to the effect "I'm going to give you something for that." She recalled seeing a hypodermic needle being drawn from a bottle. He said that he was going to give her an injection of Demerol and that she needed to expose her buttocks.

28. Ms. S.G. asked if the Demerol could be given to her in the arm. He told her that it was only injected into the buttock. She said she then loosened her pants and leaned over the arm of the sofa and he injected her.

29. After the injection, she testified that she had no recollection whatsoever of the events following the injection until two to three weeks later when something triggered a flashback which she described as being like "...clips from a movie". She said it felt like a roller coaster, very slow at first. As time went on, more things came to her and then she was able to put the events together like a jigsaw puzzle. She said that she was up that entire night because she was so distraught at the images that were emerging about what transpired that evening at Pharmaesthetics. The next morning she telephoned the police. She also testified that she went to see her brother-in-law, a lawyer, at his office on the morning after the memories started to come back.

30. Ms. S.G. said that what she remembered happening at the back office of Pharmaesthetics was that she was laying on the couch, her pants and underwear were off. She could not recall if her shirt was off or her breasts exposed. Mr. Laal was on top of her. She said that he had nothing on from the waist up and she did not look down. She recalled him saying words to the effect that "...it's surprising what is under the lab coat" which she took to be a reference to his physique. She said that there was sexual intercourse. She said she had a memory of him "pounding" on her. She could not recall how long the intercourse continued. Her next memory was of Mr., Laal leaving the back room and coming back with some paper towel or Kleenex which she said he "kind of threw them down at me" she assumed to clean herself up. She said she had no recollection of whether a condom was used, something that was important to her because she feared pregnancy and STD's.

31. Ms. S.G. recalled putting her pants on and pulling into the driveway of her home. She said that she remembered him saying something along the lines of "...has it set in". She said she felt like a robot and responded "no". She thought that she got home between 8pm and 9pm. Her youngest child was living with her at the time but was away for the night at his father's place. She said she went right to bed and does not remember whether she took her clothes off before going to bed. She testified that the next morning she had no recollection whatsoever about what had happened the night before.

32. On the morning after the memories of the events started coming to her, Ms. S.G. spoke with Constable Harper a female police officer who came to her home. At that time she testified that she was still remembering things. She was asked to write down what she remembered. She

asked Constable Harper if Mr. Laal would be approached or told about the report she was making. She said that at this point she was afraid of him. She was assured that Mr. Laal would not be contacted at this stage.

33. At about 9:30pm on the night that Ms. S.G. had made her report to police and met with Constable Harper, she received a telephone call at her home. She saw on the call display that the call was from Pharmaesthetics. She said that she "...just about lost it" because it was late and she thought that the police must have informed him of her report. She did not pick up the telephone.

34. Shortly after that telephone call, Ms. S.G. was working in the garage of her home when her daughter came in and told her that Mr. Laal was at the front door. Ms. S.G. panicked. She asked her daughter what type of car was in the driveway. Ms. K.J. told her that it was a dark, fancy, expensive car. This confirmed to Ms. S.G. that it was Mr. Laal. She said that she was "scared to death" because she thought he had been told about her report to the police earlier in the day. She and her daughter hid in the garage where they could not be seen. She recalled that the banging at the door was persistent. After she heard the car leave, she went upstairs with her daughter. Shortly afterward the telephone rang again. She saw "Pharmaesthetics" on the call display. This time Mr. Laal left the following message:

"Hi S____, it's about five minutes to ten. I've been trying to get in touch with you for the past hour. I think you've just given me your cell phone number. I don't have your home phone number. It rings, rings and rings and rings, nobody answers, I come to your house, nobody opens the door. And I try again, and it rings busy, and then you're not home. I have a bottle of wine, I have some Demerol, injectable, I thought perhaps you wanted to just get together and have some laughs and have a couple of drinks but too bad I can't get a hold of you. Talk to you later, S____. Buh-bye."

35. Ms. S.G. confirmed that both telephone calls were to her home telephone number, not her cell number. She said that after the first telephone call she phoned her brother-in-law, who told her not to answer the door and to contact the police in the morning. After the second telephone call she called her brother-in-law back who advised her to telephone the police right away. She contacted the police and ultimately provided them with the tape recorded message from Mr. Laal.

36. The panel was provided with a printout of prescriptions for Ms. S.G. that were filled at Pharmaesthetics. This document showed that after December 12, 2007, there were prescriptions filled on December 18, 2007, December 20, 2007 and December 24, 2007.

37. Ms. S.G. testified as to her recollection of picking up her prescription on one of these occasions which she said was in the first week after the events of December 12, 2007 and before her memory of those events was triggered. She said that while her son would normally come into the store because Mr. Laal would give him candy, this time she told her son to stay in the car and not come in with her. She said that Mr. Laal addressed her as "Ms. S.G." and acted as if nothing had ever happened.

38. Ms. S.G. said that after her recollection of the events at Pharmaesthetics she was “unraveled” and a “neurotic mess.” She testified that she had spoken to her doctor and to a psychiatrist to come to terms with what had occurred at the pharmacy with Mr. Laal. She said they told her that, in their opinion, it was not Demerol that was injected but most likely Rohipnol the “date-rape” drug. She tried, without success, to access victim counselling to deal with these events.

Findings of Fact

39. Counsel for the College advised the panel that the College was not alleging date rape with respect to the allegation of inappropriate sexual relations with Ms. S.G.

40. The panel found Ms. S.G. to be a credible witness. She had clearly thought a lot about the events that she reported to the panel and it was clear that they continued to upset her. While the panel is unable to find that the sexual relations alleged in the Citation occurred for the reasons set out below, it does accept her evidence of the inappropriate relationship between her and Mr. Laal as being clear, cogent and convincing.

41. The panel finds that in December 2007 Ms. S.G. was a vulnerable woman. She was a single mother who was suffering from a number of medical conditions including severe back pain and depression. This would have been known to Mr. Laal as her pharmacist because he had direct access to her prescription history on Pharmanet.

42. The panel finds that Mr. Laal did engage in an inappropriate personal relationship with Ms. S.G. First, he violated the boundary of his professional relationship with her when he invited her out on what amounted to a “date” in mid-December 2007 when he took her for drinks to the Fireside Bar and Grill and then back to the closed Pharmaesthetics premises to view pictures on the computer. The panel does not say that there can never be a social interaction between a pharmacist and a patient, but this particular interaction amounting to a date was, in the view of the panel, clearly not appropriate.

43. The panel also finds that administration by Mr. Laal of any substance by injection without medical authorization was professionally improper. In this circumstance, it involved him asking his patient, wrongly, to reveal her buttock to him and him touching her buttock, either directly or indirectly, or both when giving her an injection. In the view of the panel, this is a serious breach of the position of trust he was in vis à vis Ms. S.G.

44. The panel also finds that Mr. Laal engaged in an inappropriate personal relationship with Ms. S.G. when he came to her home, uninvited on the night of January 10, 2008 and when he said that he came to her home with wine and injectable Demerol for “laughs”.

45. The panel is not able to find, on the evidence presented, that sexual relations occurred between Mr. Laal and Ms. S.G. The panel finds that the evidence presented does not meet the

standard of proof required for such a finding. In particular, without some expert assistance as to whether Ms. S.G.'s memory lapse was consistent with the use of a "date rape" drug, the panel could not reconcile the period for which there was no memory of the events at Pharmaesthetics that evening. Without any evidence that Ms. S.G.'s memory loss could be attributed to the trauma of the reported events or to the injection of some other substance, including Demerol, or some other reason, the panel was unable to reconcile the period for which there was no memory. As a result, and particularly in light of the College position that date rape was not alleged, the panel is not able to conclude on a balance of probabilities that the sexual activities described occurred.

46. Counsel for the College advised the panel that it was able to make a finding that there was an inappropriate personal relationship without finding that sexual relations occurred between Ms. S.G. and Mr. Laal. It makes that finding. Accordingly, the panel finds that there was a personal relationship and, accordingly, that Paragraph 1 of Part A of the citation has been proved.

47. The panel next considered whether the inappropriate personal relationship as found constitutes professional misconduct pursuant to s. 39(1)(c) of the Act. In concluding that it does, the panel had reference to the decision of the Court of Appeal for *Ontario in College of Physicians and Surgeons of Ontario v. Boodoosingh*, [1993] O.J. No. 859. In that case a psychiatrist was alleged to have engaged in "improper relations" with his patient. In particular, the Court found that the inappropriate relations, which in that case included a single incident of sexual intercourse, were the result of the professional person taking advantage of the influence he had as a doctor.

48. Similarly in *D.(C) v. College of Physicians and Surgeons*, 1994 CanLII 1816(BCSC), the Court had the following to say about the obligation of a health professional to abstain from personal relationships with patients, accepting the following from the Inquiry Committee decision:

"... It matters not who was the most responsible for initiating the relationship. Dr. C.D., as the physician, was the one responsible for ensuring that the integrity of the professional relationship was maintained. It is clear to us that Mrs. L.D. was a vulnerable patient. Dr. C.D., as a psychiatrist treating this woman for chronic pain syndrome was or should have been aware of her vulnerability. In addition to all of these factors, it was apparent to all concerned that the personal and intimate relationship with Dr. C.D., only succeeded in making Mrs. L.D.'s physical, emotional and medical condition worse than it was before she had begun to see Dr. C.D. for treatment. For all of these reasons, we have no hesitation in concluding that the conduct is infamous."

49. The panel recognizes that both of these cases involved the professional person having sexual relations with the patient. However, the panel believes that the same principles apply even where there is no finding of sexual intimacy but a personal relationship arising from the position of trust. There is a professional boundary to be maintained between a pharmacist and

his patient. Mr. Laal was an important part of Ms. S.G.'s health care provision and should have respected those boundaries. Instead, as a person in a position of trust, he took advantage of Ms. S.G.'s vulnerabilities. The fact that he injected Ms. S.G. with a substance, possibly Demerol, shows that his relationship with Ms. S.G. had seriously obscured his professional judgement. His actions in crossing this professional boundary had a negative impact on Ms. S.G.'s health.

50. The panel finds that the inappropriate relationship with Ms. S.G. is professional misconduct.

51. The panel was provided with the Code of Ethics of the College which was applicable in 2007/8. Value 1 (1) reads as follows:

Value 1 – Registrants respect the professional relationship with the patient and act with honesty, integrity and compassion.

“Obligations

1. The patient-registrant relationship is a covenant, meaning that a registrant has moral obligations in response to the trust received from society. In return for this, a registrant promises to help patients achieve optimum benefit from their medications, to be committed to their welfare, and to maintain their trust.
2. ...”

52. Value 2 states:

Value 2 – Registrants honour the individual needs, values and dignity of the patient.

“Obligations

1. A registrant assists patients to make informed choices about their own best interests.
2. ...”

53. Value 4 states:

Value 4 – Registrants provide competent care to the patient and actively support the patient's right to receive competent and ethical care.

“Obligations

1. A registrant places concern for the well-being of the patient at the centre of professional practice, providing the best care that circumstances, experience and education permit.
2. ...”

54. Value 5 states:

Value 5 – Registrants protect the patient's right to confidentiality.

“Obligations

1. A registrant provides pharmacy care with consideration for the personal privacy of patients.
2. ...”

55. The panel finds that, in addition to its finding of professional misconduct, Mr. Laal breached these Values. He breached Value 1(1) by engaging in an inappropriate personal relationship with Ms. S.G. in contravention his obligations as a health care professional. He breached Value 2(1) when he injected her with a substance for which there was no medical authorization. He breached Value 4(1) when he entered into the inappropriate personal relationship and also when he injected Ms. S.G. at the premises of Pharmaesthetics. He breached Value 5(1) by using Ms. S.G.’s confidential information, in particular her telephone number, for the purposes of pursuing the inappropriate personal relationship.

Part A – Paragraph 2 – Ms. B.W.

56. Part A – Paragraph 2 of the Citation alleges:

Between January 1, 2008 and June 30, 2009 you engaged in an appropriate personal relationship that included having sexual relations with a patient, Ms. B.W.;

Evidence

57. Ms. B.W. gave evidence at the hearing. She is now 34 years old, and a single parent with a 7 year old daughter.

58. Ms. B.W. testified that she had been diagnosed in high school with severe depression. She testified that she had struggled with various health issues and depression for about 10 years prior to the incidents that are the subject matter of the Citation.

59. In 2008 she was living in Victoria with her infant daughter. Her doctor’s office was in the same mall as Pharmaesthetics. Apparently her then boyfriend, K█████ had bought flu vaccine from Pharmaesthetics for Ms. B.W. Ms. B.W. had done research on the cost of the flu vaccine at other pharmacies and felt that the Pharmaesthetics price was too high. She believed that this was in about December, 2007. She went to speak with the pharmacist at Pharmaesthetics about the price that had been charged. She spoke with Mr. Laal and said that he seemed to her to be a really nice guy. She started to fill her prescriptions at Pharmaesthetics in January, 2008.

60. She said that Mr. Laal was easy to talk to and appeared to take a real interest. She described a long list of side-effects from the various medications she had been prescribed to deal with her depression, including nausea, vision issues, memory fog, acne, weight gain, sleep disruption, suicidal thoughts and exhaustion. She said that after the birth of her daughter she had an extremely difficult time. She had low self-esteem as a single parent. Mr. Laal paid attention to her daughter. She thought that as a pharmacist he might be able to give her some advice about the medication she was on and whether there were better alternatives. She said that she told him

personal details about herself in the belief that this would help him in advising her about her medications. She also spoke to him about her relationship with K [REDACTED]

61. In May/June 2008, Mr. Laal phoned her on her cell phone when she was at her mother's home on Salt Spring Island. He asked if she wanted to go away for the weekend. She said that she was both surprised and flattered at receiving this call. She was flattered because of the attention of an educated professional man who owned a small business. They discussed options for going away including a resort on Pender Island but the trip did not materialize.

62. Subsequent to this invitation, Mr. Laal took her to a pub in Victoria for drinks and also out for dinner at a local restaurant and for coffee. She said that she was flattered by his attention and excited because he seemed like such a nice man and in addition, as a single mother with a young child, she appreciated the attention of a professional man with a job. This was in comparison to other relationships she had been involved in, including that with her then boyfriend, which she generally described as "losers". After these few dates, Mr. Laal started just coming around to her house in the evenings with a six-pack of beer and they would watch television. By this time her relationship with K [REDACTED] had ended.

63. In about July, 2008 she testified that she and Mr. Laal started a sexual relationship. She said that it was not a serious relationship. He never stayed overnight at her home. As time went on she said that he revealed a different side of his character which she described as "Jekyll and Hyde". This caused her to "Google" him. She told Mr. Laal that she had done this and about what she had found, although she did not give the details that her Google search had disclosed. The fact that she had conducted the Google search made Mr. Laal very angry. She said that he stormed out of her home saying that it was an invasion of his privacy. At this stage the relationship cooled.

64. She continued to obtain prescriptions from Pharmaesthetics. In the Fall of 2008, she went on social assistance and she said she was embarrassed to inform Mr. Laal and so telephoned Pharmaesthetics to ask for her prescription to be transferred. During this conversation Mr. Laal was apologetic for his behaviour and suggested that they meet.

65. She described an incident on February 13, 2009 when she was picking up a prescription at People's Pharmacy which was also owned and managed by Mr. Laal. It was during the middle of the day. She described having intercourse with Mr. Laal in the washroom at the pharmacy. She said that there were no other people in the pharmacy but he did not close the door to the washroom completely. She quite candidly admitted that this was not a moment of her life of which she was very proud.

66. There was also an incident in March, 2009. She described having intercourse with Mr. Laal at Pharmaesthetics. She said that this took place on the couch in the back office and it was during normal business hours.

67. Shortly after the March 2009 incident the relationship with Mr. Laal ended. Ms. B.W. said that this was a point at which the negatives of the relationship outweighed the positives.

68. The panel was provided with a printout of an HN Data Report which confirmed that Ms. B.W. stopped obtaining her prescriptions from Mr. Laal's pharmacies on June 15, 2009.

Findings of Fact

69. The panel found Ms. B.W. to be a credible witness. She did not come across as vindictive in any way. She was simply telling her story which clearly was embarrassing to her in many ways. There was no evidence that she had made a complaint about Mr. Laal to the College. She was forthcoming and candid. Her answers were spontaneous. She did not exaggerate or embellish.

70. During the period of her relationship with Mr. Laal, she was a single mother at home with a young child. She suffered from depression. Mr. Laal took her out to places she enjoyed. He showed interest in her and her young daughter. The panel felt that she was a vulnerable person and that Mr. Laal had preyed on that vulnerability for his own gratification.

71. Ms. B.W. was a patient of Mr. Laal and, a particularly vulnerable one. Mr. Laal would have known about her depression from the prescriptions he filled for her. The panel believes that it was entirely inappropriate for Mr. Laal to seek out and engage in a personal and sexual relationship with Ms. B.W. It does not matter that the relationship including the sexual aspects were consensual. It is a breach of the trust between the pharmacist and his patient to engage in a personal and sexual relationship of this nature.

72. Accordingly the panel finds that Part A, paragraph 2 of the Citation has been proved.

73. Having found that Mr. Laal engaged in an inappropriate personal and sexual relationship with Ms. B.W. the panel turns to the issue of whether that conduct constitutes professional misconduct.

74. The panel was referred to 3 cases involving sexual relationships between health care professionals and their patients. In *College of Physicians and Surgeons of Ontario v. Boodoosingh*, 1993 12 O.R. (3d) 707 the Ontario Court of Appeal would not interfere with a finding of the Discipline Committee of the College of Physicians and Surgeons of Ontario that one single instance of sexual intercourse between a patient and her psychiatrist was "...disgraceful, dishonourable and unprofessional conduct...". The court based its decision on the fact that the psychiatrist-patient relationship put the doctor in a position of influence of which he took advantage. This was so even though it was argued that the doctor-patient relationship had ended before the sexual intercourse and that the relationship was consensual.

75. In *D.(C.) v. College of Physicians and Surgeons of B.C.*, 1994 CanLII 1816, the Supreme Court of British Columbia upheld an Inquiry Committee finding of infamous conduct between a doctor and a patient stating at page 13:

“Regardless of who initiated the relationship, the responsibility always lies upon the professional to assess whether or not the establishment or continuation of any such relationship is appropriate; I believe any physician exercising reasonable judgment would have recognized that this relationship was not appropriate at this time with this person.

I would adopt as applicable here what was said by Lord Denning in the English case of *De Gregory v. General Medical Council*, [1961] A.C. 957 (P.C.) at 965-6:

It was suggested that a doctor, who started as the family doctor, might be in a different position when he became a family friend; his conduct on social occasions was to be regarded differently from his conduct on professional occasions. There must, it was said, be cogent evidence to show that he abused his professional position; it was not enough to show that he abused his social friendship. This looks very like a suggestion that he might do in the drawing-room that which he might not do in the surgery. No such distinction can be permitted. A medical man who gains the entry into the family confidence by virtue of his professional position must maintain the same high standard when he becomes the family friend.”

76. In the case of *Mussani v. College of Physicians and Surgeons of Ontario*, 2004 CanLII 48653, the Ontario Court of Appeal set out a number of factors that had been identified by a Task Force established by that College to make recommendations with respect to the issue of sexual abuse of patients by doctors. The panel found the factors enumerated by the Task Force to be helpful guidance in determining the issue of professional misconduct. Those factors are set out in paragraph 21 of the *Mussani* decision as follows:

“[21] Its recommendations for zero tolerance and mandatory revocation were founded upon a number of important findings and factors. Principal amongst these were the following:

- a) the general vulnerability of patients in such relationships;
- b) the power imbalance that almost invariably exists in favour of the practitioner, thus facilitating easy invasion of the patient’s sexual boundaries;
- c) the privileged position of doctors in society, based on their education, status and access to resources;
- d) the breach of trust entailed in such conduct physicians;
- e) the serious, long-term injury to the victim, both physical and emotional, that results from sexual abuse, including the harmful effects on future care

caused by the victim's inability to place her trust in other doctors and caregivers;

- f) the fact that sexual abuse tarnishes public trust in the entire profession;

77. In addition, the panel was referred to the case of *Cross v. Wood*, 92 Man. R. (2d) 94 for guidance in circumstances where the respondent in a disciplinary proceeding did not testify. The panel appreciates that there is no onus of proof on Mr. Laal in this proceeding but the following quotation from the *Cross* case (at paragraph 15) is helpful in this case where Mr. Laal did not attend and did not give evidence in respect of the merits of the allegations in the citation.

“The Board, in my view, was entitled to comment upon Cross’ failure to testify, and in doing so did not place a burden of proof upon him. The words of Arbour J.A. in *R. v. Johnson* (1993), 79 C.C.C. (3d) 42 (Ont. C.A.), at page 50, succinctly describe the rationale:

It is not so much that the failure to testify justifies an inference of guilt; it is rather that it fails to provide any basis to conclude otherwise.If the Crown’s case cries out for an explanation, an accused must be prepared to accept the adverse consequences of his decision to remain silent: *R. v. Boss* (1988), 46 C.C.C. (3d) 523 at p. 542, 68 C.R. (3d) 123, 42 C.R.R. 166 (Ont. C.A.).”

78. The panel finds that Mr. Laal was a health care professional in a pharmacist-patient relationship with Ms. B.W. The evidence was that Ms. B.W. was a vulnerable person who was influenced by Mr. Laal’s status as a health care professional. As such, the responsibility at all times was with Mr. Laal to avoid abusing his position for personal gratification. He did not do so and the panel has no hesitation in finding his conduct well below the standard of conduct expected of pharmacists in British Columbia and therefore constituting professional misconduct pursuant to s.39(1)(c) of the Act.

Values breached

79. The panel also considered whether Mr. Laal’s conduct as described above is a breach of the Values that are included in the Code of Ethics of the College in place at the time of the conduct. The panel finds that the conduct described above is a breach of Value 1 (Registrants respect the professional relationship with the patient and acts with honesty, integrity and compassion) and in particular Value 1(1). The panel finds that engaging in a sexual relationship with a patient is a breach of the covenant and the trust that this Value expresses.

80. The panel also finds that Mr. Laal’s conduct is a breach of Value 2 (Registrants honour the individual needs, values and dignity of the patient) and in particular Value 2(3) when he entered into a sexual relationship with a patient. The panel finds that such a relationship is contrary to Mr. Laal’s professional commitment to the patient’s care.

81. The panel also finds that Mr. Laal's conduct is a breach of Value 4 (Registrants provide competent care to the patient and actively supports the patient's right to receive competent and ethical care) and, in particular, Value 4(1). In placing his personal gratification above the well-being of his patient, Mr. Laal breached this professional value.

82. The panel also finds that Mr. Laal's conduct is a breach is Value 5 (Registrants protect the patient's right of confidentiality) and in particular Value 5(1) when he used Ms. B.W.'s cell phone number to call her (at Saltspring Island) to initiate a personal relationship.

Part A – Paragraph 3 – Gun Charge

83. Paragraph 3 of Part A of the Citation states:

On or about July 16, 2009 you kept a loaded 1922 FN Browning model, Belgium handgun, hidden in a couch within the licensed pharmacy of Pharmaesthetics Compounding Pharmacy.

Evidence

84. There were 5 College inspectors who were assigned to conduct an inspection of the pharmacies owned and managed by Mr. Laal (Pharmaesthetics and Peoples). Ms. Suzanne Solven, deputy registrar of the College gave evidence at the hearing that satisfied the panel that all of the inspectors involved were properly appointed under the Act.

85. Alan Samuelson gave evidence for the College. During the period 2003 to February 2012 he was a hospital pharmacy inspector with the College. He was asked to participate in the College inspection at Pharmaesthetics on July 16, 2009.

86. There was a meeting of the inspection team on July 15, 2009 to fix a game plan for the inspection. He said that they were specifically asked to look for chemicals used in compounding. The inspectors were aware that there had been a domestic issue with Mr. Laal resulting in a prohibition against possessing firearms. The inspectors were told that there might be firearms present at Pharmaesthetics.

87. On the morning of July 16, 2013 the inspectors met first with the Saanich police. They were escorted to Pharmaesthetics by the police. They waited outside while Mr. Laal was arrested.

88. They entered the pharmacy at 09:35 in the morning to conduct the investigation. At that time Mr. Laal was there under arrest. Mr. Laal had his hands behind his back but Mr. Samuelson could not see handcuffs. He said that Mr. Laal provided another inspector, Mr. Budd, with the combination for the safe and he was then taken away by the police. A police officer remained with the inspection team. They were told that they had 5 hours to conduct the inspection.

89. Mr. Samuelson said that he looked at the general organization of the pharmacy and its inventory. He described the work areas being cluttered and untidy. He looked to see if there was adequate inventory at the pharmacy. He said that mixed in with the “active” inventory there was a large number of outdated products which by their placement were intended to be dispensed.

90. Mr. Samuelson identified a number of the photographs of Pharmaesthetics that were provided to the panel. The photographs taken on July 16, 2009 bear that date. The pictures showed the back room of the pharmacy which was used as an office including bedding, and food. The photographs showed general dishevelment. Mr. Samuelson said that it appeared that Mr. Laal was living in the office area.

91. He said that he also searched the premises to determine if they were safe and also to determine if there were drugs hidden from the regular inventory. This search was very thorough including looking in the washroom, behind pictures and in the toilet tank. He also searched the aesthetics room which he described as not being separate from the dispensary.

92. At about 1:35 pm on July 16, 2009 he was searching a couch in the back room of the pharmacy. Under the middle cushion he found a gun. He immediately alerted the attending police officer who said that the College inspection must cease immediately and that the premises were now a crime scene. The inspection concluded with the items seized by the inspectors being removed and recorded and taken to Vancouver to the offices of the College. He testified that there was no time that the items seized were not in the control of one of the College inspectors.

93. Mr. Samuelson testified that he had given evidence at Mr. Laal’s criminal trial and that the accused in that trial was the same person that he had encountered at the beginning of the July 16, 2009 inspection at Pharmaesthetics who was identified as Mr. Laal. Mr. Samuelson identified a picture of the gun that he had found underneath the cushion on the couch in the back room of the pharmacy. It was the same picture that he had identified at the criminal trial.

94. Mr. Laal was also identified by Ms. Polly Graves another College inspector who attended Pharmaesthetics on July 16, 2009. She too had given evidence at Mr. Laal’s criminal trial and identified him as the man who had been at Pharmaesthetics on July 16th under arrest.

95. The panel was provided with certified copies of the Information and the Record of Proceedings in Court File Number 146334. The Reasons for Judgment of Brooks, P.C.J. were also provided. The documents disclosed that Mr. Laal was convicted of Count 1 of the Information which is germane to this proceeding. Count 1 reads as follows:

Count 1

Ali Asghar LAAL, on or about the 16th day of July, 2009, at or near Saanich, in the Province of British Columbia, did possess a loaded restricted firearm, a Browning semi-automatic handgun, without being the holder of an authorization or a licence under which eh may possess the restricted firearm in that place and a registration certificate for the firearm, contrary to Section 95(1) of the Criminal Code.

96. The panel was also provided with a report from the RCMP – National Forensic Services which had been produced by Erica Johnson who is designated as a firearms technologist. Her statement of qualifications identified that her opinion on firearms had been accepted in Provincial and Supreme Courts in the Province of British Columbia. Counsel for the College advised the panel that this report had been properly served on Mr Laal as an expert report. The report disclosed that Ms. Johonson had examined the gun found in the couch at Pharmaesthetics by Mr. Samuelson. She identified the gun as a FN Browning model 1922 semi-automatic pistol. The report stated that the pistol conforms to the definition of a restricted weapon within the meaning of s.84(1) of the *Criminal Code of Canada*.

Findings of Fact

97. The panel was advised that pursuant to section 71(5) of the *Evidence Act* (British Columbia) the certified documents from Court File Number 146334 could, on proof of the identity of the person named in the certificate as the offender, be sufficient evidence of the conviction of the person named in the certificate. Pursuant to sections 71(2) and 71(6) of the *Evidence Act*, the certificate is conclusive proof that the person committed the crime. The panel accepts the evidence of Mr. Samuelson and Ms. Graves as identification for these purposes and finds that Mr. Laal kept a loaded 1922 FN Browning model, Belgium handgun, hidden in a couch within the licensed pharmacy of Pharmaesthetics.

98. Accordingly, the panel finds paragraph 3 of Part A to be proven.

99. The panel next considered whether having an unregistered loaded, semi-automatic, restricted firearm in good working order, unsecured on the premises of Pharmaesthetics constituted professional misconduct.

100. The panel started its consideration of this issue with the fact that the possession of this gun by Mr. Laal was found to be a criminal offence. That criminal offence was committed, at least in part, on the premises of Pharmaesthetics. Pharmaesthetics is a place where Mr. Laal practices his profession of pharmacy. It is a place where the public comes to receive health care, more specifically the services of a licensed pharmacist.

101. It is the view of the panel that the possession of the loaded, restricted firearm on the premises of Pharmaesthetics is unsafe to the public whose health and well-being Mr. Laal is licensed by the College to serve and also to pharmacy staff. The panel also notes that following the unauthorized renovation to the Pharmaesthetics premises that the public had access to the back room of the pharmacy where the loaded gun was found by Mr. Samuelson. The panel also notes that the gun was not properly secured.

102. The panel was provided with excerpts from the text, *The Regulation of Professions*, by James Casey. It contained the following guidance for determining if conduct constitutes

professional misconduct at page 13-3 (referring to *Davidson v. Royal College of Dental Surgeons (Ontario)* (1925), 57 O.L.R., 222 (C.A.):

“If it is shown that a member of the college, in the pursuit of his profession, has done something with respect to it which would be reasonably regarded as improper by his professional brethren, of good repute and competency, then it is open to the board of directors of the college to decide that he has been guilty of ‘improper conduct in professional respect’.”

103. Although that is an older case, the panel finds it helpful in determining that this conduct is professional misconduct. The panel consisting of two licensed pharmacists and a public representative find that storing or keeping a loaded semi-automatic restricted weapon under a cushion in a pharmacy is not only illegal but also unsafe and inappropriate. A pharmacy is a place for health care and the keeping of this gun on those premises is the antithesis of the purpose for which both the pharmacy and Mr. Laal are licensed by the College.

Part B of the Citation

104. Ms. Polly Graves gave evidence. She had graduated in Pharmacy from UBC in 1994. She joined the College in 2009 after working in community pharmacy.

105. Ms. Graves participated in the July 16 2009 inspection at Pharmaesthetics as well as the July 21, 2009 inspection. On the latter date she attended with Mr. Budd to complete the inspection that had been halted when the gun was found. She testified that between July 16, 2009 and July 21, 2009 there had been some access to the pharmacy, she believed by a pharmacist employee who she identified as “Reid” and possibly by Mr. Laal’s wife who was a co-owner. She testified that on July 21st they were let into the Pharmaesthetics premises by Reid.

106. She said they found expired drugs throughout the pharmacy which were mixed in with the active inventory.

107. She described the front or public part of the Pharmaesthetics premises as giving a favourable first impression as orderly and attractive and the back room as having no apparent work flow meaning that she could not follow the organization of the medications on the dispensary counter. Referring to the July 16, 2009 inspection she said there was a surprising amount of clutter for the beginning of a work day.

108. She described taking photographs at Pharmaesthetics on both days.

109. Ms. Graves did not take photographs of expired medications which she identified as having been taken at the College by College staff. She testified that none of the pictures that she had taken had been staged.

110. She confirmed that on July 16th the Pharmaesthetics safe had been opened by Mr. Budd using the combination supplied by Mr. Laal before he was taken away and pictures had been taken by the inspectors of the opened safe. The safe was then reclosed.

111. It was on July 21st that most of the drugs were seized and taken back to the College securely.

112. The panel found Ms. Graves to be a credible witness. She was somewhat nervous but answered in a forthright way. If she did not know the answer to a question she said so. She was careful and precise in the language that she used in response to questions. She did not speculate or exaggerate. She gave her evidence in a matter of fact manner.

Part B – Paragraph 1(a) of the Citation

113. Paragraph 1(a) of Part B of the Citation states:

[You] maintained outdated pharmaceutical products in the licensed pharmacy and as part of the active pharmacy inventory contrary to Section 5 of the bylaws to PODSA;

114. Section 5(4) of the bylaws to PODSA provide as follows:

Non-usable and expired drugs must be stored in a separate area of the pharmacy or a secure storage area until final disposal.

115. The panel was provided with a series of photographs of pharmaceuticals collected by inspectors during the two visits to Pharmaesthetics. These pictures were taken by College staff of the pharmaceuticals that were collected by the College inspectors. On some of the photographs the expiration date is not readily visible. The panel was provided with a disc which contains the same photographs where the expiry date is visible.

116. From the evidence, the panel can see that the pictured pharmaceuticals were expired as of the date of the inspections. The panel accepts Mr. Samuelson's and Ms. Graves' evidence that these expired pharmaceuticals were found in with the active stock of the pharmacy and were not in a separate area of the pharmacy or a secure storage area for final disposal.

117. Accordingly the panel finds that the allegation at Part B, paragraph 1(a) of the Citation has been proved.

Part B – Paragraph 1(b) of the Citation

118. Paragraph 1(b) of Part B of the Citation states:

[You] maintained unlabelled compounded prescriptions within the licensed pharmacy contrary to s.9(5) of the Community Pharmacy Bylaw, Schedule F of the Bylaws to the *HPA*;

119. Section 9(5) of the Community Pharmacy Bylaw, Schedule F of the Bylaws to the Act provides:

Prescription Label

9(5) For a compound preparation, the label must include all active ingredients

120. The panel was referred to a series of photographs taken by the inspectors and by College staff. There were pictures of unlabelled bottles and other containers. The panel was told that no analysis had been done of the contents of the bottles and containers.

121. The panel carefully reviewed all of the photographs provided to it. There were photographs of many unlabelled bottles and containers but the panel was unable to identify any as compounded prescriptions which is the language used in the allegation in the Citation.

122. Accordingly the panel finds that Part B, paragraph 1(b) is not proved.

Part B – Paragraph 1(d) of the Citation

123. Paragraph 1(d) of Part B of the Citation states:

[You] failed to provide a clear working space on the counters in the dispensary contrary to s.11(2)(c) of the PODSA bylaws and Value 7 of the *Code of Ethics* in s.87, Schedule A of the Bylaws to the *HPA*;

124. Section 11(2)(c) of the PODSA bylaws provides as follows:

Community Pharmacy Premises

11(2) The dispensary area of a community pharmacy must

- (c) include a dispensing counter with at least 30 square feet of clear working space, in addition to service counters;

125. Value 7 of the *Code of Ethics* provides:

Value 7 – Registrants endeavour to ensure that the practice environment contributes to safe and effective care.

Obligations

1. A registrant manager has a responsibility to foster an optimal practice environment and to ensure the provision of required resources.

2. If there is a conflict between professional activities and management policies, professional responsibilities will take precedence.
3. A registrant will challenge employment conditions that are inconsistent with professional practice as described in this code.

126. Polly Graves and Alan Samuelson gave evidence in relation to this charge. In addition the panel had the photographs taken by the inspectors on July 16 and 21, 2009.

127. In respect of this charge the panel relied on the photographs taken on July 16, 2009 because there was evidence that others had had access to Pharmaesthetics between July 16 and 21, 2009.

128. Photographs 19, 26, 32 34, 35, 37, 38, 41, show the condition of the dispensary working counters. The panel felt that the counters were somewhere cluttered but that clutter was not unusual in a working community pharmacy. The panel could not, on the evidence, determine that the counters as depicted in the photographs were sufficiently below the expected standard to constitute a breach of the PODSA bylaws and Value 7 of the *Code of Ethics*.

129. Accordingly the panel finds that Part B, paragraph 1(d) of the Citation has not been proved.

130. The panel would like to comment that other areas of the dispensing such as the sink area (photographs 16 and 34), the reference area (photograph 14), receiving area (photographs 12 and 21) and the office (photographs 6 and 7) were messy, cluttered, disorganized and unclean and could constitute a health risk to the public and certainly fall below the standards expected in today's pharmacies.

Part B – Paragraph 1(e) of the Citation

131. Paragraph 1(e) of Part B of the Citation states:

[You] failed to notify the College that the licensed pharmacy had been renovated contrary to s.9(4) of the Bylaws to PODSA.

132. Section 9(4) of the Bylaws to PODSA provides as follows:

Pharmacy Licenses

9(4) A pharmacy's manager must submit to the registrar, in writing, any proposed pharmacy design changes or structural renovations together with a new pharmacy diagram for approval before the commencement of construction or other related activities.

133. Suzanne Solven provided the panel with the drawings for Pharmaesthetics that had been approved by the College at the time the pharmacy was licenced (March 15, 2004). She testified

that there had been no request by Mr. Laal as manager, for approval of a renovation of the Pharmaesthetics premises.

134. It was noted on the approved drawing that it was contemplated that there would be an “Esthetics Treatment Room” and studio that was located at the rear of the premises and was accessible without the need to go through the dispensary area.

135. Ms. Polly Graves identified a sketch that she had done of Pharmaesthetics as it appeared at the time of the inspection. Comparing the two it was obvious that Pharmaesthetics had been significantly renovated. In particular the sketch prepared by Ms. Graves showed that anyone using the washroom or going to the aesthetics room would now pass through and therefore have access to the dispensary. Both Ms. Graves and Mr. Samuelson testified that there was only one door from the outside into the Pharmaesthetics premises, that being the front door.

136. Based on this evidence the panel concluded that the allegation set out in Part B, paragraph 1(d) had been proved.

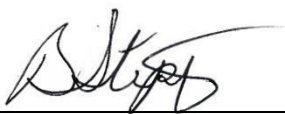
By the Discipline Committee:



Michael MacDougall, Chair

June 26, 2013

Date



Barbara Stipp

June 26, 2013

Date



Peter Cook

June 26, 2013

Date