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CASE SUMMARY: WHERE A HEARING PANEL'S PENALTY DECISION FALLS WITHIN A REASONABLE RANGE OF OUTCOMES, DEFERENCE SHOULD BE GIVEN TO THAT COMMITTEE'S DECISION IN LIGHT OF ITS EXPERTISE

Administrative law – Decisions reviewed – College of Physicians and Surgeons – Judicial review – Appeals – Standard of review – Reasonableness – Physicians and surgeons – Disciplinary proceedings – Professional misconduct or conduct unbecoming – Sexual relations with patients – Suspensions

College of Physicians and Surgeons of Ontario v. Peirovy, [2018] OJ No 2341, 2018 ONCA 420, Ontario Court of Appeal, May 3, 2018, P.S. Rouleau, M.L. Benotto and L.B. Roberts J.J.A.

A physician was held by the College's Discipline Committee to have sexually abused four female patients. The Discipline Committee imposed a penalty consisting of a six month suspension and restrictions on his practice. The College appealed from the penalty decision on the basis that, *inter alia*, it was unreasonable because the Discipline Committee made inconsistent findings of fact and the penalty imposed was manifestly unfit.

The Divisional Court allowed the College's appeal, holding that the penalty imposed was unreasonable on the bases submitted by the College.

The physician sought to set aside the decision of the Divisional Court, and for the Discipline Committee's penalty to be reinstated.

The Court of Appeal held that, though the Divisional Court had correctly identified reasonableness as the standard of review, the Divisional Court had inappropriately substituted its own views on penalty rather than showing deference to the Discipline Committee's decision. The Court of Appeal confirmed that, as the Discipline Committee is the expert tribunal created by the legislature to assess allegations of misconduct in the medical profession and to determine the penalty appropriately tailored to the circumstances of each case, deference to the Discipline Committee's decision was necessary.

This case was digested by [JoAnne G. Barnum](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact JoAnne G. Barnum at jbarnum@harpergrey.com.