

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Joshua Hwang, this is notice that the Discipline Committee ordered that there shall be a ban on publication of the names and any information that could disclose the identity of any people referred to orally or in the exhibits filed at the hearing, except for Dr. Hwang, under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Hwang,  
2019 ONCPSD 33**

**THE DISCIPLINE COMMITTEE OF THE COLLEGE  
OF PHYSICIANS AND SURGEONS OF ONTARIO**

**IN THE MATTER OF** a Hearing directed by  
the Inquiries, Complaints and Reports Committee of the College of Physicians and Surgeons of Ontario  
pursuant to Section 26(1) of the **Health Professions Procedural Code**  
being Schedule 2 of the *Regulated Health Professions Act, 1991*,  
S.O. 1991, c. 18, as amended.

**B E T W E E N:**

**THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO**

**- and -**

**DR. JOSHUA HWANG**

**PANEL MEMBERS:**  
**MR. P. PIELSTICKER**  
**DR. I. ACKERMAN**  
**MS. C. TEBBUTT**  
**DR. P. GARFINKEL**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:**

**MS. CAROLYN SILVER**  
**MS. EMILY GRAHAM**

**COUNSEL FOR DR. HWANG:**  
**MS. CAROLYN BRANDOW**  
**MS. SARAH MARTENS**

**INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:**

**MS. KIMBERLY POTTER**

**PUBLICATION BAN**

**Hearing Date:** June 17, 2019  
**Decision Date:** June 17, 2019  
**Written Decision Date:** July 24, 2019

## **DECISION AND REASONS FOR DECISION**

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on June 17, 2019. At the conclusion of the hearing, the Committee released a written order stating its finding that Dr. Joshua Hwang committed an act of professional misconduct. In its Order, the Committee also set out its penalty and costs order with written reasons to follow.

### **THE ALLEGATIONS**

The Notice of Hearing alleged that Dr. Hwang committed an act of professional misconduct:

1. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional;
2. under paragraph under paragraph 1(1)34 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in conduct unbecoming a physician; and
3. under clause 51(1)(a) of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”), in that he has been found guilty of an offence that is relevant to his suitability to practise.

### **RESPONSE TO THE ALLEGATIONS**

Dr. Hwang did not attend the hearing. Dr. Hwang’s counsel indicated that Dr. Hwang entered a plea of no contest to the allegations in the Notice of Hearing.

## **THE FACTS**

The following facts were set out in a Statement of Uncontested Facts (Liability), which was filed as an exhibit and presented to the Committee:

### **PART I – FACTS**

#### **A. Background**

1. Dr. Joshua Hwang is 32 years old. He graduated with an M.D. from Western University Schulich School of Medicine and Dentistry in 2016. Between October 2016 and July 2017, Dr. Hwang was a PGY1 resident in the Family Medicine residency training program at Western University. He had a certificate of registration authorizing postgraduate education. On July 1, 2017, Dr. Hwang was placed on a leave of absence from his residency program. On August 24, 2017, Dr. Hwang was suspended from that program, and was never reinstated. Dr. Hwang's certificate of registration expired on June 30, 2018.

#### **B. CPSO Investigation**

2. In June 2017, Dr. Hwang was living in London, Ontario. On June 21, 2017, Dr. Hwang travelled to attend a conference in a different city. He made arrangements to stay with two of his friends, Dr. A and his wife, Dr. B, at their apartment.

3. Dr. A and B's apartment had 2 bedrooms and 2 bathrooms. Dr. A and B used the master bedroom and en suite master bathroom. Dr. Hwang was given the guestroom to stay in, and a separate bathroom in the common area to use.

4. On June 21, 2017, Dr. Hwang installed a video and audio recording device ("the Recording Device") in his friends' en suite master bathroom by plugging it into an electrical wall outlet facing their shower and toilet. The Recording Device was concealed as a USB charger. Using the Recording Device, Dr. Hwang surreptitiously recorded Drs. A and B naked and partially naked in their bathroom, including when they were using the toilet and showering.

5. After Dr. B noticed the Recording Device plugged into the electrical outlet in the en suite bathroom, Dr. A questioned Dr. Hwang about it. Dr. Hwang acknowledged that the Recording Device belonged to him, but falsely denied knowing that it was a camera or that it had recording capabilities. Dr. Hwang told Dr. A that he thought the Recording Device was merely a USB charger; that he had purchased it on the internet; that he had been trying to use it to charge his cell phone; but that he had had to plug it in in the en suite master bathroom because it had not been working in other outlets in his friends' apartment. This explanation was false.

6. Dr. Hwang also falsely told Dr. A that he could provide an e-mail receipt to prove that the device he had ordered was supposed to be a USB charger. Dr. Hwang forwarded to Dr. A an email receipt dated November 30, 2012 that related to Dr. Hwang's purchase of a USB wall charger. The USB wall charger that Dr. Hwang had purchased was not the Recording Device that Dr. Hwang installed in his friends' en suite bathroom in June 2017 that he had used to surreptitiously record them.

7. In addition to surreptitiously video recording Drs. A and B in their bathroom, Dr. Hwang also used the Recording Device to surreptitiously record:

- a) a clinical encounter between Dr. Hwang and a patient, taken in June 2017, at clinic where Dr. Hwang was practicing as part of his residency. The camera was positioned to face the exam table. The patient was off camera during most of the encounter. Dr. Hwang is visible throughout the recordings. Dr. Hwang can be seen taking the patient's blood pressure reading, and speaking to the patient. Another video captures further discussion between Dr. Hwang and the patient. Dr. Hwang can also be seen removing the camera from the electrical wall outlet. The patient was unaware that Dr. Hwang had recorded the patient encounter. The patient did not consent to Dr. Hwang's recording the appointment; and
- b) two individuals in bedrooms in Dr. Hwang's home. Both of them were, at times, in a state of nudity. In one of the recordings, a person was engaged in intimate sexual activity. The recordings were made surreptitiously. Neither of these two individuals was aware that Dr.

Hwang video recorded them, nor did they consent to the recording. One of the individuals described it as an “invasion of privacy” when told of the recording.

8. Dr. Hwang made the recordings referred to above so that he could later watch them for his sexual gratification.

### **C. Criminal Proceedings**

9. On August 4, 2017, Dr. Hwang was charged with committing voyeurism against Drs. A and B, contrary to s. 162 of the *Criminal Code of Canada*, and specifically that:

[in] June in the year 2017 at [a certain location] did, without lawful excuse, surreptitiously make a visual recording of a person who was in circumstances that gave rise to a reasonable expectation of privacy when that person was in a place in which that person could reasonably be expected to be nude, to be exposing his or her genital organs or anal region or exposing her breasts or be engaged in explicit sexual activity, namely the victim’s bathroom, and thereby commit an offence under Section 162, subsection (1), clause (a) of the Criminal Code, contrary Section 162, subsection (5) of the Criminal Code of Canada.

A copy of the criminal information is attached at Tab 1 to the Statement of Uncontested Facts.

10. Dr. Hwang pleaded guilty to, and was convicted, of this offence on February 17, 2018. On June 29, 2018, Dr. Hwang was sentenced to six months’ house arrest, followed by two years’ probation. The Ontario Court of Justice transcripts of Dr. Hwang’s conviction and sentencing are attached at Tabs 2 and 3 to the Statement of Uncontested Facts

### **PART II – NO CONTEST**

11. Dr. Hwang does not contest the facts at paragraphs 1 to 10 above, and does not contest that, based on these facts, he engaged in professional misconduct under:

- a) paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional;
- b) paragraph 1(1)34 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has engaged in conduct unbecoming a physician; and
- c) clause 51(1)(a) of the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”), in that he has been found guilty of an offence that is relevant to his suitability to practise.

### **RULE 3.02 PLEA OF NO CONTEST – RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE**

Rule 3.02 of the Rules of Procedure of the Discipline Committee regarding a plea of no contest states that:

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Discipline Committee can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

## **FINDINGS**

The Committee accepted as correct the facts set out in the Statement of Uncontested Facts. Having regard to these facts, the Committee found that Dr. Hwang committed an act of professional misconduct in that: he has engaged in an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; he has engaged in conduct unbecoming a physician; and, he has been found guilty of an offence that is relevant to his suitability to practise.

## **PENALTY AND REASONS FOR PENALTY**

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. This involved revocation of Dr. Hwang's certificate of registration effective immediately, a reprimand and the payment of costs to the College for a half day hearing in the amount of \$6,000.

The Committee is aware that it should not depart from a joint submission on penalty unless the proposed penalty would bring the administration of justice into disrepute, or is otherwise not in the public interest (*R v. Anthony-Cook*, 2016 SCC 43).

The Committee took into account a number of principles in assessing the proposed penalty. Paramount is the protection of the public. Also important is a desire to express the denunciation of the profession of the member's behavior, and to maintain public confidence in the integrity of the profession and the College's ability to regulate the profession in the public interest. Deterrence both of the member specifically and physicians in general is also important in determining the penalty. When possible, the penalty should also provide for rehabilitation of the member. The penalty should also be proportionate to the misconduct.



In considering the appropriate penalty, the Committee also took into account the nature of the behaviour in question, aggravating factors and mitigating factors and considered prior similar cases.

### **Nature of the Misconduct**

Dr. Hwang engaged in a shocking pattern of behavior, which violated the trust of multiple individuals: his friends who welcomed him into their home; a patient in an examining room; and two individuals who were guests in Dr. Hwang's home who felt they were safe to undress or engage in sexual activity in private. Dr. Hwang recorded these people without their permission and for his own sexual gratification.

### **Aggravating Factors**

There were a number of aggravating factors:

1. Dr. Hwang's behaviour was planned and deliberate. He purchased the camera online and went to his friend's home where he placed it in specific locations for example, facing the shower and the toilet in the bathroom.
2. When questioned by his friend, Dr. Hwang falsely denied knowing the device was a camera, rather, he stated that it was a USB charger. Later, he falsely provided a receipt to cover up his heinous act.
3. His behaviour was not confined to an isolated incident – it involved multiple people on several occasions. It cannot be considered impulsive.
4. Dr. Hwang surreptitiously filmed these people in settings where they had the highest expectation of privacy – the bedroom, the bathroom and in an examining room. This was an egregious invasion of their privacy.

## **Mitigating Factors**

By pleading no contest, Dr. Hwang saved the expense of a contested hearing and spared several witness the emotional impact and stress of testifying at a hearing. A plea of no contest, however, does not indicate acceptance of responsibility or insight into his behaviour.

## **Prior Similar Cases**

The Committee is aware that we are not bound by prior decisions of the Committee, but prior similar cases may serve as a guide to the appropriate penalty. Each case, however, must be decided based on its own facts. The Committee considered several prior cases that were similar, albeit not identical to Dr. Hwang's case.

In *CPSO v. Johnston*, 2016 ONCPSD 45, Dr. Johnston entered a plea of no contest to an allegation of conduct unbecoming a physician, in respect of accessing and purchasing child pornography and surreptitiously recording two individuals who were not his patients in a public bathroom (*CPSO v. Johnston*, 2016). Dr. Johnston had surreptitiously filmed an unknown male defecating in a bathroom stall, and a male urinating into a urinal. Dr. Johnston was acquitted of voyeurism in criminal court. The Discipline Committee accepted the parties' joint submission on penalty, and ordered the revocation of his certificate of registration, a reprimand and the payment of hearing costs.

The Discipline Committee commented on Dr. Johnston's behavior as follows:

There is an expectation of moral behavior by persons granted the privilege to practise medicine. Dr. Johnston's engagement in the consumption of child pornography and voyeurism has demonstrated conduct that is totally unbecoming of a physician.

Dr. Hwang's voyeurism was similarly conduct totally unbecoming of a physician.

In *CPSO v. Hyson*, 2019 ONCPSD 10, Dr. Harvey Hyson entered a plea of no contest to the allegation that he had been found guilty of an offence relevant to his suitability to practise and that he engaged in conduct unbecoming a physician. Dr. Hyson, a neurologist, responded to an ad on Craigslist that he believed was written by a 16 year old girl and sought to meet her to arrange sexual services in exchange for money. Dr. Hyson was arrested at the arranged meeting location by an undercover police officer. The Committee ordered revocation of Dr. Hyson's certificate of registration, a reprimand and the payment of hearing costs based on the submissions from the College's counsel. Dr. Hyson did not contest the penalty.

In *CPSO v. Onzuka*, 2013 ONCPSD 27, Dr. Justin Onzuka, an emergency room physician, entered a plea of no contest to allegations of having been found guilty of an offence relevant to his suitability to practise, engaging in the sexual abuse of patients and engaging in disgraceful, dishonourable or unprofessional conduct. His difficulties in behavior started early, while still in training. Dr. Onzuka sexually abused female patients by touching them in a sexual manner. He touched one patient on her face and neck while she was under anesthetic, and touched another patient's breasts while the patient was in surgery under anesthetic. He also pursued personal relationships with female patients by asking them out during, or after, he treated them at the hospital. Dr. Onzuka disrobed one patient while she was unconscious, and then while she was naked and unconscious, he videotaped her and sexually abused her by touching her for a sexual purpose. Dr. Onzuka was also convicted of two counts of sexual assault. The Committee found Dr. Onzuka's behavior to be totally repugnant. The acts represented an egregious abuse of patient trust and their criminal nature was recognized with a substantial period of incarceration. The Committee ordered revocation of his certificate of registration, a reprimand, payment and security for payment to the fund for patient therapy and counseling and the payment of hearing costs following a joint submission from the parties.

Based on these cases, the Committee finds that the joint submission by the parties, which includes revocation of Dr. Hwang's certificate of registration, falls within a reasonable range of outcomes for conduct of a similar nature.

## **CONCLUSION**

Physicians, by the very nature of the practice of medicine, have access to their patients' most private selves and concerns. Physicians observe patients in disrobed states as part of physical examinations and examine body areas of great sensitivity, privacy, and vulnerability. Members of the public expect to be able to trust their physicians to utilize their position, knowledge and skills for their patients' benefit in a respectful and non-prurient manner. Further, for a physician to engage in criminal conduct, such as voyeurism, outside of the practice of medicine reflects negatively on the reputation of the profession as a whole and must be denounced as conduct unbecoming a member of the profession.

The jointly proposed penalty as a whole upholds the principles of penalty. Revocation, which is the most severe penalty available to the Committee, serves to protect the public and indicates that such egregious behaviour by a member will not be tolerated. It expresses the Committee's abhorrence of Dr. Hwang's misconduct, and serves as a deterrent to the membership at large. The reprimand provides to the Committee the opportunity to express its abhorrence of Dr. Hwang's conduct directly to him in public. Therefore, the Committee accepted the jointly proposed penalty as appropriate in this case.

## **ORDER**

The Committee stated its findings in paragraph 1 of its written order of June 17, 2019. In that order, the Committee ordered and directed on the matter of penalty and costs that:

2. The Registrar revoke Dr. Hwang's certificate of registration effective immediately.
3. Dr. Hwang attend before the panel to be reprimanded.

4. Dr. Hwang pay costs to the College in the amount of \$6,000.00 within six (6) months from the date of this Order.