

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Calvin Tai-Ien Lian, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name of the spouse of Dr. Lian 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: Lian, C. T. (Re)

**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. CALVIN TAI-IEN LIAN

PANEL MEMBERS:

DR. W. KING (Chair)
M. FORGET
DR. D. PITT
S. BERI
DR. M. DAVIE

Hearing Date: November 26, 2012
Decision Date: November 26, 2012
Release of Written Reasons: January 18, 2013

PUBLICATION BAN

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto November 26, 2012. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

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

1. under subsection 51(1)(a) of the Health Professions Procedural Code, which is schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”), in that he has been found guilty of an offence that is relevant to his suitability to practise; and
2. 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 for a physician.

RESPONSE TO THE ALLEGATIONS

Dr. Lian admitted the first allegation of professional misconduct in the Notice of Hearing that he has been found guilty of an offence that is relevant to his suitability to practise. Counsel for the College withdrew the second allegation in the Notice of Hearing.

FACTS AND EVIDENCE

The following facts were set out in an Agreed Statement of Facts and Admission which was filed as an exhibit and presented to the Committee:

FACTS

1. Dr. Calvin Tai-Ien Lian (“Dr. Lian”) is a family physician practising emergency medicine in Toronto, Ontario.
2. On December 22, 2009, Dr. Lian pleaded guilty to one count of assault under section 266 of the Criminal Code. The police had attended at Dr. Lian’s home on October 1, 2009, at which time Dr. Lian’s wife advised them that during a dispute between herself and Dr. Lian, he had pulled her off the bed and punched her on her chest, back and leg. A red mark was visible on her chest to the attending police.
3. Further to his plea of guilt, Dr. Lian was found guilty of assault, and a conditional discharge was imposed, contingent upon eighteen months’ probation. Attached as Tab 1 to [the] Agreed Statement of Facts and Admission is the criminal information relating to Dr. Lian’s guilty plea. Attached as Tab 2 to [the] Agreed Statement of Facts and Admission is the transcript of the related proceeding, held on December 22, 2009, in the Ontario Court of Justice before the Honourable Mr. Justice Blouin.

ADMISSION

4. Dr. Lian admits the facts set out above, and admits that he has been found guilty of an offence that is relevant to his suitability to practise, and thereby has committed professional misconduct.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts and Admission. Having regard to these facts, the Committee accepted Dr. Lian’s admission and found that he committed an act of professional misconduct, in that he has been found guilty of an offence that is relevant to his suitability to practise.

AGREED STATEMENT OF FACTS ON PENALTY

The following facts were set out in an Agreed Statement of Facts on Penalty which was filed as an exhibit and presented to the Committee:

FACTS

1. Dr. Calvin Tai-Ien Lian (“Dr. Lian”) practices emergency medicine.
2. Prior to the assault which is the subject of this proceeding, Dr. Lian previously pleaded guilty to assault in relation to an assault on his wife in 2002, for which he received an absolute discharge.
3. Dr. Lian entered into both individual and marital counselling with Dr. X in October 2009 after being arrested for assaulting his wife but before pleading guilty to the offence of assault. Attached at Tab 1 [to the Agreed Statement of Facts on Penalty] is a report from Dr. X dated November 20, 2009, and attached at Tab 2 [to the Agreed Statement of Facts on Penalty] is a report from Dr. X dated December 14, 2009. Dr. X’s reports were filed as exhibits in the criminal proceedings against Dr. Lian. Dr. X states that Dr. Lian completed ten sessions of individual counselling for anger management, seven sessions of marital counselling jointly with his wife, and ten additional sessions of anger management counselling focused on Partner Assault.
4. Attached at Tab 3 [to the Agreed Statement of Facts on Penalty] is a supplementary report of Dr. X dated October 19, 2012, in which Dr. X states that Dr. Lian received weekly individual counselling followed by weekly marital counselling with his wife until February 1, 2010, and that they have since continued in marital counselling together every four to six weeks from April 13, 2010, until the present.
5. In his 2010 Annual Renewal Form to the College, Dr. Lian indicated that he had been charged with an offence since April 1, 2009. In submissions to the College during the investigation into the matter, Dr. Lian stated that he deeply regretted the events that led to his being charged criminally, and that he continued to take those events seriously.

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.

The Committee considered the principles relevant to determining a penalty. First and foremost, the penalty must protect the public. Other penalty principles include maintenance of public confidence in self-regulation of the profession, specific and general deterrence and rehabilitation of the physician.

The Committee has discretion to accept or reject a joint submission on penalty. The Committee acknowledges, however, that the case law provides that a tribunal should accept a joint submission, unless the penalty proposed is so disproportionate to the findings that acceptance of the proposed penalty would be contrary to the public interest and would bring the administration of justice into disrepute.

The Committee finds the proposed penalty to be appropriate. There are aggravating factors in this case. Although this is Dr. Lian's first time before the Discipline Committee, it is not the first time Dr. Lian has been found guilty of assault. He was found guilty of assaulting his wife in 2002 and received an absolute discharge at that time. It is very disturbing to the Committee to find he has been found guilty of a repeated offence.

Mitigating factors include Dr. Lian's cooperation in this matter. In fact, he reported the conduct himself to the College. This led not only to a cost savings as a contested hearing was avoided, but also spared his wife the necessity of testifying. As mentioned above, this is the first time Dr. Lian has appeared before the Discipline Committee. The Committee is aware that Dr. Lian has received for his behaviour from the criminal court a conditional discharge with probation of 18 months. Dr. Lian is still in counselling with his wife and counsel for Dr. Lian informed the panel that he is embarrassed by and remorseful for his behaviour.

The offence for which Dr. Lian was found guilty is relevant to his suitability to practise. As an emergency room physician, Dr. Lian may very well be called upon to diagnose and treat victims of violence and of domestic abuse. It is important that a treating physician

who is presented with patients with injuries be attuned to the possibility of domestic violence, be sensitive to such issues, and be approachable and open to disclosure from victims of abuse.

The parties presented a trio of recent cases (Sewchand 2001, Prebtani 2005 and Alcock 2010) to demonstrate that their proposed penalty was in keeping with similar past cases, and the Committee reviewed these cases. While each case is unique and must be determined on its own facts, it is helpful to have some guidance from similar cases.

The proposed penalty of a reprimand will serve to express the Committee's abhorrence of Dr. Lian's behaviour and denounce his conduct. Physicians are held to a high ethical standard and must be beyond reproach in their personal conduct. Patients must be able to trust physicians, who are in a position of a power, to behave in a manner that respects that trust and does not abuse that power. Violence cannot be tolerated. A physician's misconduct reflects on the profession as a whole and can undermine the trust that is necessary for a proper physician-patient relationship. A public reprimand will serve to uphold the public trust in our self-regulation process.

The imposition of a condition on Dr. Lian's certificate of registration that he participate in and successfully complete an ethics course relating to the ethical issues raised by his misconduct, will specifically address the issues of Dr. Lian's that led him to behave in a violent manner. This will serve to rehabilitate the member and, consequently, will protect the public.

The Committee has discretion to award costs in cases it finds suitable. The tariff rate proposed assists in indemnifying the College for its costs of a one day hearing. This is an appropriate case for such an order, and the Committee orders Dr. Lian to pay \$3,650.00 toward the College's costs for this one day hearing.

ORDER

Therefore, having stated the findings in paragraph 1 of its written order of November 26, 2012, the Committee ordered and directed on the matter of penalty and costs that:

2. Dr. Lian appear before it to be reprimanded;
3. the Registrar impose the following terms, conditions and limitations on Dr. Lian's certificate of registration until the terms referred to in paragraph 3(a) below has been completed:
 - (a) Dr. Lian shall participate in and successfully complete an educational program in ethics facilitated by the College, relating to the ethical issues raised by his misconduct, such program to be completed at the earliest opportunity and in any case not later than within six (6) months of the date of this Order, with Dr. Lian to provide proof of successful completion of the program to the College within that time;
 - (b) Dr. Lian shall be responsible for any and all costs associated with implementing this term of this Order.
4. Dr. Lian pay costs to the College in the amount of \$3,650.00 within thirty (30) days of the date of this Order.

At the conclusion of the hearing, Dr. Lian waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.