

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Heung-Wing Li, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the witnesses or any information that could disclose the identity of the witnesses under subsection 47(1) of the *Health Professions Procedural Code* (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

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

93(1) Every person who contravenes an order made under section 45 or 47 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and not more than \$20,000 for a subsequent offence.

Indexed as : Li (Re)

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

IN THE MATTER OF a Hearing directed
by the Executive Committee and the Complaints Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 36(1) and 26(2) of the *Health Professional 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. HEUNG-WING LI

PANEL MEMBERS:

DR. J. MCGILLEN (CHAIR)
DR. J. WATTS
B. MOSELEY-WILLIAMS
DR. P. HORSHAM
J. DHAWAN

Hearing Dates:

September 26-28 & October 24-28, 2005

Decision/ Release Date:

January 12, 2006

Publication Ban

On July 28, 2008, the Divisional Court altered the Discipline Committee's decision on penalty. See *Li v. College of Physicians & Surgeons (Ontario)* [2008] O.J. No. 2975.

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on September 26 to 28 and October 24 to 28, 2005. At the conclusion of the hearing, the Committee reserved its decision.

PUBLICATION BAN

On September 26, 2005, the Discipline Committee made an order pursuant to subsection 47(1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, prohibiting the publication or broadcast of the identity of the witnesses or any information that could disclose the identity of the witnesses.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Heung-Wing Li committed an act of professional misconduct as defined in:

1. clause 51(1)(b.1) of the Code, in that he sexually abused the patients identified in schedules 1 and 2 to the Notice of Hearing;
2. paragraph 29.30 of Ontario Regulation 548, R.R.O. 1990, made under the *Health Disciplines Act*, R.S.O. 1990 (O.Reg. 548") in that he engaged in sexual impropriety with the patients identified in schedule 3 to the Notice of Hearing;
3. paragraph 27.29 of Ontario Regulation 448, R.R.O. 1980, made under the *Health Disciplines Act*, R.S.O. 1980 (O.Reg. 448") in that he engaged in sexual impropriety with the patient identified in schedule 3 of the Notice of Hearing;
4. paragraph 1(1)2 of Ontario Regulation 856/93 as amended, made under the *Medicine Act*, 1991, (“O.Reg. 856/93”) in that he failed to maintain the standard of practice of the profession;

5. paragraph 29.22 of O.Reg. 548, in that he failed to maintain the standard of practice of the profession;
6. paragraph 27.21 of O.Reg. 448, in that he failed to maintain the standard of practice of the profession;
7. clause 1(1)33 of O.Reg. 856/93, for an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional;
8. paragraph 29.33 of O.Reg. 548, in that he engaged in conduct or an act relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and
9. paragraph 27.32 of O.Reg. 448, in that he engaged in conduct or an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO THE ALLEGATIONS

Dr. Li denied the allegations as set out in the Notice of Hearing.

A. OVERVIEW

It was alleged that Dr. Li committed sexual abuse or impropriety during the course of breast examinations performed on three patients. In each case, it was also alleged that the examinations failed to maintain the standard of practice of the profession and represented an act relevant to the practice of medicine that, having regard to all of the circumstances,

would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

In the case of the first patient, Patient A, the impugned conduct consisted of an examination of the breast from behind using both hands; this occurred after Dr. Li had previously signed an affidavit to the College stating that he would not perform such examinations. In the case of the second patient, Patient B, it was alleged that Dr. Li performed a breast examination that was not medically indicated, that he made inappropriate comments about breast examination and that he palpated her breasts underneath her clothes. In the third case, that of Patient C, Dr. Li was alleged to have performed a breast examination that was not medically indicated and that was inappropriate in that he cupped her breast in his hands. The three cases were alleged to have occurred independently and no similar fact evidence was called or alleged.

The primary issues raised by this case were:

1. Did the examinations performed by Dr. Li constitute sexual abuse regarding patients Patient A and Patient B and sexual impropriety regarding Patient C? and
2. Did the examinations represent a failure to maintain the standard of care and/or constitute behaviour that was disgraceful, dishonourable or unprofessional?

SUMMARY OF THE EVIDENCE

The Panel heard evidence from the three complainants and from an expert witness, Dr. Z, as well as from Mr. Y and Dr. X on behalf of the College. The Committee also heard the evidence of Dr. Li and an expert, brought by the defence, Dr. W. In addition, the Panel received an agreed statement of facts providing evidence that Dr. Li made a formal admission to the College in 1996 that conducting breast examinations on a patient by examining the patient from behind and by placing one hand on each breast, as opposed to both hands simultaneously on one breast, was an inappropriate examination method, and that conducting a breast examination by placing his hand inside the patient's blouse was

also inappropriate. The Panel also received an agreed statement of the evidence of Dr. V with whom Dr. Li had performed a three-part course on breast examination after the completion of the affidavit. Finally, the Panel received transcripts of evidence given by Dr. U, Ms. I and Ms. H at previous legal proceedings

Patient A

The Panel heard from Patient A, a 36-year-old woman. In 1998, she was seen by a physician who worked in the same clinic as Dr. Li. This physician found a lump in her breast and referred her to a specialist who performed a biopsy. Later, she returned to the clinic for one of a series of allergy shots. On that occasion, she saw Dr. Li and, on seeing the biopsy report in her file, she asked what it had reported. Dr. Li replied that it was unclear and asked if she minded a further breast examination. When she got up to go to the examination table, Dr. Li stated that she did not have to lie down and told her to stand. He then examined her breasts after having undone her bra. The examination was performed with one hand on each breast from behind with Dr. Li's hands and arms passing underneath the patient's axillae. At one point, he cupped the right breast with his right hand while examining the left breast where the lump had been found. Later, he moved his left hand to the right breast and cupped the breast while moving his right hand to the axilla. At one point during the examination, the patient felt something touching her buttock. She stated that she was scared and moved forward on tiptoes to avoid contact. Following the examination, the patient went to the receptionist, Ms. H, and asked questions about the appropriateness of the examination and also asked how to file a complaint with the College. Later, this complainant spoke to her boyfriend and, two days after the examination, called the College to make the complaint. She also, on the same day, went to see Dr. X to complain about the events.

In cross-examination, Patient A confirmed that she had given evidence in two criminal proceedings (a preliminary hearing and a criminal trial in 2000 and 2001 respectively) and in hearings at the College in 2002 and 2005. A number of differences between her evidence at this hearing and her earlier evidence were highlighted and put to her. These included that, in previous proceedings, she had testified that, on previous occasions, Dr.

Li had performed some form of physical examination whereas she testified here that she had not previously had a physical exam performed by Dr. Li. She had also previously testified that the examinations took 20 to 30 seconds whereas, at this hearing, she stated that it took about 10 seconds. She was unable to remember whether a breast examination had been associated with the ultrasound of her breast performed prior to the biopsy or whether an examination was performed by Dr. T, the specialist who performed the biopsy. The witness specifically denied that Dr. Li stated that he was going to examine her breast in a different way and denied that he stated he would teach her how to do a breast examination. She agreed that the contact on her buttocks did not constitute “poking” and that Dr. Li was not breathing heavily, did not appear nervous and made no sexual comments during the course of the examination.

Patient B

The second patient, Patient B, is a 29 year-old woman who saw Dr. Li in 1994 when she was aged 18, with the history of a flu-like illness. She stated that he examined her stomach and then moved his hand to her chest below her breast, slipping his hand underneath her bra and performing a brief examination of the breast. When she asked what he was doing, he stated that he was performing a breast examination and that it was very common for teenage girls to have breast cancer. She felt uncomfortable and “weird” after this examination but did not speak to anyone. However, when she returned for her subsequent appointment, she stated that she did not want a breast examination performed and said that Dr. Li responded by saying “I guess you can get your boyfriend to do it”. He then became angry and unfriendly. She did not make a complaint until 1999 after a friend told her about criminal proceedings that were being taken with respect to Dr. Li. On cross-examination, the patient stated that the best description of what he had done was that he had “groped” her breasts. She agreed that she had not used this term on a previous occasion and had used the words “pressed down”. The witness was shown a video tape of her statement to police given prior to the criminal trial in 2001 in which she stated that Dr. Li first listened to her heart and then pressed on her chest, indicating the parasternal area rather than the breast.

Patient C

The third complainant, Patient C, came to Dr. Li for allergy shots starting in the fall of 1988. She also saw him for bronchitis. On one occasion while attending for an allergy shot, she asked him to listen to her chest because she was getting a head cold. He examined her chest from the side. During the course of the examination, she stated that he cupped her breast with the stethoscope “fluttering over the top part of her chest”. She was unable to remember whether her children (who accompanied her to the doctor’s office) were present in the examination room at the time and she was unable to remember what she was wearing.

Dr. X

The Panel heard from Dr. X, a family physician practising in the same clinic as Dr. Li. She gave evidence that Patient A, the first complainant, had come to see her in November 1998 to complain about the examination performed by Dr. Li. She did not make a chart annotation of this visit and kept her notes separately. She confirmed that Patient A had stated that Dr. Li asked her if he could examine her breasts and that he said she did not need to go to the examination table. Patient A had stated that Dr. Li had examined both breasts simultaneously from behind. Dr. X decided that she was required to make a mandatory report to the CPSO. In addition, she spoke to Dr. Li one week later in his office to tell him that a patient had complained about a breast examination and that it had been reported to the College. Dr. Li’s response was that, sometimes, he examined the breast from behind and that this could be misinterpreted. (At this time, Dr. Li did not know either the name of the patient or the substance of the complaint). He did not ask Dr. X to not report the case and did not try to intimidate her in any way.

Mr. Y

The Panel heard from Mr. Y after ruling on a motion from the defence to deny post offence conduct evidence. After hearing a summary of the proposed evidence, the Panel determined whether to admit it by applying the test that it should be relevant and that it should have probative value that outweighs any prejudicial effect. The Panel judged that

the evidence was likely to possess sufficient probative value and relevance and that there was minimal risk of prejudice and allowed the evidence to be heard.

Mr. Y, who gave evidence through an interpreter, works in a managerial position where Patient A is also employed. He described a meeting with Dr. Li in March 1999 in which Dr. Li asked for his help in resolving a complaint by a patient who worked at the same organization as Mr. Y. Dr. Li did not ask for specific action but stated that he would “give something”. It was not clear what would be given or to whom. Mr. Y suggested that the general manager of the organization be involved in the meeting and further that the issue should be handled by a lawyer rather than by staff. The meeting finished with no final conclusion. The meeting did not involve any form of threat or any request that the patient not go to the police or the College. Having heard the evidence, the Panel did not draw any inference of “consciousness of guilt” from it and did not ascribe any weight to it with respect to proving the allegations in the Notice of Hearing.

College Expert

The Panel accepted Dr. Z, the Chief of Family Practice at a General Hospital and a teacher of undergraduate and postgraduate students at a university, as a qualified expert on breast examination in family practice. He described the normal method of examination of the breast. He stated that he had never either heard or read of performing such an examination from behind. He emphasized the importance of letting patients know what the physician is about to do, and why. He described the examination of the breast as described by Patient A as not meeting the standard of care and clearly differentiated breast examination from examination of the chest wall. He indicated that a chest wall examination would be appropriate in an 18 or 19-year-old female with chest pain but that it should be accompanied by an explicit rationale stated to the patient. He agreed that, in listening to the chest, it would be common to lift the breast and that examination of the chest wall involved palpation over the medial part of the breast. In reviewing the patient charts, he felt that examination of breasts in the case of Patient A at the time when she asked for the result of the biopsy was a reasonable step to have taken.

Dr. Li

Dr. Li and an expert witness gave evidence for the defence. Dr. Li is a Canadian graduate who immigrated from Hong Kong at the age of 18. He has practiced in Englehart, Keswick and Toronto. He stated that it had been his common practice to examine the breasts from behind for over 20 years because he considered it to be both sensitive and rapid, particularly if the mass was very small and very deep. At the time when he signed the agreement with the College not to perform such examinations in 1996, he was not fully aware of the reasons why such an examination was inappropriate and not fully convinced of its undesirability. In the course that he underwent with Dr. V, he describes doing an evaluation using a model of the breast to examine and perform aspirations, and observing patients with Dr. V. However, he stated that they did not discuss doing examinations from behind. In the case of Patient B, the second patient, he stated that he was unable to remember the specific events but that he was likely to have done a chest wall examination in an 18 year old woman complaining of chest pain and that he was unlikely to have said that breast cancer is common in an 18 year old girl. He referred to the chart demonstrating his note that she exhibited tenderness over the fourth rib in support of his belief that he had performed a chest wall examination.

He remembered the examination of Patient A since the complaint had been made relatively soon after the examination. He agreed that he had unbuttoned her bra, not given her a gown and conducted the examination from behind. He indicated that he had shown her how to find the lump when he was examining the right breast and that he kept a distance between himself and the patient.

With respect to the meeting at Patient A's place of work, he stated that he had been there several times for business purposes and that he went to get help and advice because he knew that both the College and the police were investigating the incidents.

In cross-examination, Dr. Li denied that he would suggest that a boyfriend examine the breast, although he agreed that patients may present saying that a boyfriend or a partner has found a lump. He admitted that, at the time that he examined Patient A, he knew that

breast examinations from behind were regarded as inappropriate and that they might cause distress to patients.

Defence Expert

Dr. W was accepted as an expert by both counsel. He is an Assistant Professor at a university. He teaches undergraduate, postgraduate and international medical graduate (“IMG”) students and is a peer assessor for the College. The Panel accepted Dr. W as an expert. He stated it is not unusual in office practice to not provide a gown for a chest wall examination. On the other hand, he said that a breast examination was normally done with the patient gowned. He distinguished a chest wall examination from a breast examination and agreed that a patient might mistake a chest wall examination for a breast examination particularly if adequate explanation was not included. In assessing the examination of the breasts performed on Patient A, he stated that the totality of the encounter appeared quite proper. However, the examination of the breasts from behind in the manner described failed to reach the standard of care.

Various editions of an English textbook by Hamilton Bailey were introduced into evidence. Dr. W stated that he would accept it as authoritative. The text describes examinations of the breast from behind in order to elicit fluctuation of a cyst. However, the Panel noted that the illustrations show this being done over the shoulders and state that it is “most desirable, if not imperative, to follow this examination with trans illumination”. Dr. W also agreed that the text shows the examination of supraclavicular nodes during examination of the breast and this may also be done from behind but again over the shoulder.

MOTION FOR NON-SUIT – Patient C

Before calling defence witnesses and with the agreement of the College, counsel for the defence made a motion for non-suit with respect to the allegations involving Patient C. Counsel argued that there was no evidence in the chart that a breast examination was performed and no evidence that the examination of the chest wall was in any way inappropriate. The Notice of Hearing alleged that Dr. Li performed a breast examination

despite the fact that a breast examination was not medically indicated and that he performed an inappropriate breast examination, in that, while listening to her chest with the stethoscope he cupped her breast in his hands. The College expert had given evidence that it was possible that the palmar aspect of the hand might come in contact with the breast while examining the heart and lungs. The evidence was clear that Dr. Li was listening through a stethoscope at the time that the patient felt concern.

Legal counsel for both parties agreed with the advice from independent legal counsel that the appropriate legal test to be used is whether or not there is any evidence upon which a reasonable jury properly instructed could make a finding of professional misconduct. The Panel understood that the motion related only to the allegations relating to Patient C and that its role was not to assess credibility, nor to weigh evidence as it would at the conclusion of the hearing. Rather, it was to assess whether there was any evidence, direct or circumstantial, for every essential element of the allegations, which could support a finding against the doctor were it believed when ultimately assessed at the conclusion of the hearing. The Committee was satisfied that there was no evidence upon which a reasonable trier of fact properly instructed could make a finding of professional misconduct with respect to the allegations relating to Patient C and therefore granted the motion. All the allegations in the Notice of Hearing with respect to Patient C were therefore dismissed prior to the opening of the defence case.

FINDINGS and DECISION - Patient B and Patient A

As a consequence of the findings with respect to the allegations against Patient C, the Panel had to come to a decision with respect to only the allegations regarding patients Patient A and Patient B. The Panel considered these two cases independently of one another.

Patient B

With respect to the allegations regarding Patient B, the Panel were persuaded that the descriptions by both the patient and by Dr. Li were consistent with an examination of the chest wall and that such an examination was consistent with the complaints of the patient,

consistent with the investigations performed, and with the charting. The Panel placed no weight on the lateness of the complaint of the patient. Although the comments regarding the incidence of breast cancer and the examination of the breast by a boyfriend, as reported by the patient, might indicate that a part of a breast examination occurred, the Panel concluded that there was insufficient proof of the allegation of sexual abuse. In the Panel's view, the evidence pointing to sexual abuse did not meet the Bernstein test of being clear and convincing based on cogent evidence.

In summary, therefore, the Panel felt the College had not discharged its onus regarding the allegation of sexual abuse towards this patient and had not proven the allegations to the standard required. The Panel was advised by counsel for the College that, if it came to this conclusion, the allegations of failing to maintain the standard of the practice and engaging in conduct that was disgraceful, dishonourable or unprofessional should not be further considered by the Panel. That is, the College accepted that, in this case, a finding of sexual abuse was a necessary basis for proceeding to a consideration of the other allegations in the Notice of Hearing related to this patient.

Patient A

With respect to Patient A, it was clear and admitted by Dr. Li that an examination was performed in the way described by the patient. The Panel finds that discrepancies in her testimony between this hearing and previous hearings were not of significance. Experts for both parties testified that such an examination fell below the standard of care. The examination occurred after Dr. Li had signed a statement and undergone an educational program specifically directed towards the appropriate and proper examination of the female breast, which the Panel found made clear that a breast examination from behind was not acceptable. The Panel viewed Dr. Li's deliberate misbehaviour in ignoring the standards and his written statement as serious and concluded that it constituted conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The post offence conduct of Dr. Li (in Patient A's place of work and with Dr. X) could well be construed as evidence of guilt regarding his behaviour, but could not be construed as specific evidence of this behaviour having a sexual connotation or constituting sexual abuse. The experts for both parties agreed that a breast examination was reasonable under the specific circumstances even though Dr. Li was not the primary physician and even though a specialty opinion had been given that the lesion was probably benign. On the other hand, Dr. Li appeared evasive and defensive in many of his answers. He challenged Dr. V's recollection of the educational course. He did admit that he performed the examination in a way that he knew to be inappropriate. The Panel does not find the evidence proves the allegation of sexual abuse. The Bernstein standard of proof being clear and convincing based on cogent evidence was not met. Although this was not in the Panel's view a case of sexual abuse, it was the case of a physician ignoring what he had been taught as an appropriate examination technique, ignoring a statement he had signed, and conducting the examination in his own way, which the evidence disclosed was not in accordance with standards of practice of the profession.

SUMMARY

In summary, all the allegations regarding the patient Patient C were dismissed prior to the opening of the defence case.

With respect to the allegations regarding Patient B, they are dismissed, as the College has not proven them to the Bernstein standard.

With respect to the allegations regarding Patient A, the Panel finds that:

1. the allegation of sexual abuse is not proven to the Bernstein standard;
2. the allegation of failing to maintain the standard of practice of the profession has been proved; and,
3. the allegation of conduct relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional has been proved.

Therefore, the Committee directs the Hearings Office to arrange a date for a penalty hearing in respect to the findings made.

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B E T W E E N:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. HEUNG-WING LI

PANEL MEMBERS:

DR. J. MCGILLEN (CHAIR)
DR. J. WATTS
B. MOSELEY-WILLIAMS
DR. P. HORSHAM
J. DHAWAN

Penalty Hearing Dates:

March 23 and June 28, 2006

Penalty Decision Date:

October 2, 2006

Release of Written Reasons on Penalty Date: *October 2, 2006*

Publication Ban

DECISION AND REASONS FOR DECISION ON PENALTY

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on September 26 to 28 and October 24 to 28, 2005.

On January 12, 2006, the Committee delivered in writing its Decision and Reasons for Decision, stating its findings that Dr. Li, in relation to his care of a patient (Patient A), committed an act of professional misconduct in that he failed to maintain the standard of practice of the profession; and in that he engaged in conduct relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The Committee heard evidence and submissions on penalty on March 23 and June 28, 2006, and reserved its decision.

PUBLICATION BAN

On September 26, 2005, the Committee made an order pursuant to subsection 47(1) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, prohibiting the publication or broadcast of the identity of the witnesses or any information that could disclose the identity of the witnesses.

EVIDENCE AND SUBMISSIONS ON PENALTY

The Committee received a written victim impact statement from Patient A and accepted the submission from the College that, although victim impact statements are required by regulation only in sexual abuse cases, the Committee has the discretion to receive such statements in cases such as this which do not involve a finding of sexual abuse. The Committee also received copies of the Decision and Reasons for Decision from the Discipline Committee hearing regarding Dr. Li in 1996. The Committee also received a volume of character references for Dr. Li. Most of these came from patients, although one character reference was received from a physician who supervises Dr. Li in his current role as a surgical assistant.

The Committee heard from two defence witnesses, Dr. S and Dr. R, who were qualified as experts in forensic psychiatry and forensic psychology, respectively. The Committee received their curricula vitae and reports prepared by both witnesses.

Dr. S has a practice that deals predominantly with patients whose conduct has brought them into contact with the courts or with disciplinary bodies. A substantial number of these patients require an assessment regarding the risk of re-offending. He performed a psychiatric interview on Dr. Li and concluded that there was no evidence of a psychiatric disorder. Dr. S found that Dr. Li does, however, have a style or traits of being quick and abrupt in his interactions with patients and was originally unaware of the effects of his behaviour on patients. Dr. S felt, however, that Dr. Li now displayed awareness of how his interactions were likely to upset patients and, moreover, Dr. Li was able to identify issues susceptible to therapy in the program in which he has now enrolled. Dr. S agreed with Dr. R's characterization of Dr. Li's personality as having narcissistic traits. He concluded that Dr. Li was at a low risk of re-offending but that he needed ongoing therapy and education. In cross-examination, Dr. S recognized the limitations of the interview in a patient who wished to present himself in a particularly favourable light and he also recognized Dr. Li's original apparent acceptance of disciplinary action taken by the College, which was followed nonetheless by subsequent re-offence.

Dr. R was qualified as an expert in forensic psychology. He has an academic appointment, although he is currently in independent practice, and has specific expertise, including academic publications, on the issue of recidivism or recurrence of offences. Dr. R performed an interview and a battery of psychological tests on Dr. Li including a test that assesses attempted manipulation by the patient. He found no evidence of a cognitive deficit, thought disorder or symptoms of major mental illness, although he identified an above-average score on impression management and self-deceptive enhancement. These results were consistent with the circumstances and not unexpected in a professional undergoing serious disciplinary procedures.

Dr. R found that Dr. Li had a defensive personality that was characterized by narcissistic features although he did not feel that this represented a full narcissistic personality disorder. He concluded that Dr. Li demonstrated a low risk of recurrence particularly if he remained in the current group therapy program in which he was participating.

Counsel for the College submitted that the appropriate penalty was revocation of Dr. Li's certificate of registration, given that he was a repeat offender and that this represented the only way to appropriately protect the public. College counsel submitted that Dr. Li has already been prevented from practising and has effectively served a suspension of thirty-four (34) months. While this might serve as a general deterrent, the College submitted that revocation was necessary given that prior penalties and attempts at retraining had failed to prevent his re-offending. College counsel conceded that, if the Committee was not persuaded to revoke, an alternative, albeit less desirable, penalty would only be acceptable if it included very strict restrictions on Dr. Li's clinical activity.

Counsel for Dr. Li submitted that an appropriate penalty would be: a twelve-month suspension to be suspended due to the previous thirty-four-month suspension; a term on Dr. Li's certificate of registration that physical examination of female patients over the age of twelve (12) years be in the presence of a monitor approved by the Registrar, who is a registered health professional aware of the Discipline Committee's Order and who undertakes to report immediately any misconduct to the Registrar; completion of the College's Boundaries' Course; continuation of treatment with Dr. R with quarterly reports to the College until Dr. R recommends, and the Registrar agrees, that treatment is no longer necessary; and, a reprimand.

Counsel for Dr. Li pointed out that, although revocation might reasonably be imposed for repeat offences, in this instance the offence was repeated only once and did not represent a true pattern. Moreover, although recognizably a serious offence, it did not represent the most serious of offences. Counsel for Dr. Li pointed out in mitigation that Dr. Li had already been through criminal charges with resultant publicity, which generated further allegations, and further charges in addition to the College proceedings. Counsel for Dr. Li observed that his certificate of registration was suspended from January 2002 to October 2004 for a period, which he submitted is probably longer than any panel would have imposed, and he had been petitioned into bankruptcy for two years in August 2003.

The Committee accepted that the penalty should be consistent with penalties for a serious offence. Dr. Li committed a single act after knowing of the College's disapproval of this specific conduct and had sanctioned him. These facts raised serious concerns as to his governability, as well as the clear

need for protection of the public. The penalty should be considerably stronger than the three-month suspension and period of education imposed on Dr. Li in 1996. The Committee considered the authorities presented by counsel. In particular, the Committee noted that, in two instances where the Committee had imposed revocation for second offences when the physician's conduct was disgraceful, dishonourable, or unprofessional (the cases of *CPSO v. Gabrielle* and *CPSO v. Genereux*) the second offences had involved serious issues of incompetence and physician assisted suicide, respectively.

The Committee remained concerned that Dr. Li, while understanding that a repetition of the offence carried serious risk to himself, appeared to not yet fully understand or appreciate or accept the level of distress that such behaviour imposed on a patient. Despite the fact that his psychiatric assessments suggest that relapse risk is low, the Committee felt that the penalty should indicate a significant level of both general and specific deterrence and a very high level of public protection; moreover that there was a need to continue education, therapy and practice restrictions.

ORDER

Therefore, the Discipline Committee orders and directs that:

1. Dr. Li shall appear before the Committee to be reprimanded and the fact of the reprimand be recorded on the register.
2. The Registrar suspend Dr. Li's certificate of registration for a period of twenty-four months. The entire period of the suspension to be itself suspended due to the previous thirty-four-months that Dr. Li has been excluded from practice.
3. Dr. Li is to complete the College's Boundaries Course within the next twelve months at his expense.
4. Dr. Li is to continue in the program of therapy arranged by Dr. R who will provide quarterly reports to the College until Dr. R recommends, and the Registrar agrees, that treatment is no longer necessary. Dr. Li shall ensure that Dr. R executes an undertaking acceptable to the

College. If for any reason there is an inability for Dr. R to continue treating Dr. Li, then another psychologist, acceptable to the College, may be substituted.

5. The Registrar impose a term, condition and limitation on Dr. Li's certificate of registration that restricts him to practise as a surgical assistant for at least one year. During this period a physician will be identified in the hospital in which Dr. Li practices who will agree to monitor his performance and behaviour, report to the College every six months and execute an undertaking acceptable to the College.
6. After completion of the College's Boundaries Course and successful completion of therapy with the psychologist, Dr. Li may either continue with a certificate of registration restricted to practise as a surgical assistant or, upon Dr. Li's written request, the Registrar may impose a term, condition or limitation on his certificate of registration that his general practice is confined to male patients only. Dr. Li will have been out of such practice for four years and the Committee therefore orders that, before the imposition of the term, condition and restriction on his certificate restricting his practice to male patients only, Dr. Li must comply with the requirements of the Changing Scope of Practice policy of the College and submit a program of re-education, training and supervision to the Registrar. The program must be approved by the Registrar and successfully completed before the issuance of a certificate of registration restricted to male patients only.