

**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 Complaints Committee of  
the College of Physicians and Surgeons  
of Ontario, pursuant to Section 61(4)  
of the **Health Disciplines Act**,  
R.S.O. 1990 c. H.4, as amended

**BETWEEN:**

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

**- and -**

**DR. HEUNG-WING LI**

**PANEL MEMBERS:** DR. J. CURTIS (CHAIR)  
DR. S. PHILLIPS  
C. HYETT  
J. FINLAYSON

**HEARING DATE:** JUNE 21, 1996

**DECISION/RELEASED DATE:**

JUNE 21, 1996

## DECISION AND REASONS FOR DECISION

This matter came before the Discipline Committee of the College of Physicians and Surgeons of Ontario at Toronto on June 21, 1996.

In the Notice of Hearing it was alleged that Dr. Li was guilty of professional misconduct under Subsection 60(3)(c) of the **Health Disciplines Act**, 1980, as amended and Subsection (61)(3)(c) of the **Health Disciplines Act**, 1990, as amended, as follows:

- a) He failed to maintain the standard of practice of the profession contrary to Subsection 27(21) of Ontario Regulation 448/80 as amended, and Subsection 29(22) of Ontario Regulation 548/90;
- b) He engaged in sexual impropriety with a patient, contrary to Subsection 27(29) of Ontario Regulation 448/80 as amended and Subsection 29(30) of Ontario Regulation 548/90;
- c) He engaged in conduct or an act relevant to the practice of medicine that having regard to the circumstances would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Subsection 27(32) of Ontario Regulation 448/80 as amended and Subsection 29(33) of Ontario Regulation 548/90 as amended;
- d) He failed to maintain the records that are required to be kept respecting a member's patients contrary to Subsection 27(3) of Ontario Regulation 448/80 as amended and Subsection 29(3) of Ontario Regulation 548/90 as amended.

It was further alleged that Dr. Li was incompetent under Subsection 60(4) of the Health Disciplines Act as amended and Subsection 61(4) of the **Health Disciplines Act 1990** as amended in displaying in the professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates unfitness to continue in practice.

Dr. Li pleaded guilty to the allegation that he failed to maintain the standard of practice of the profession and not guilty to the other allegations.

## **ORIGIN OF THE CASE**

In August 1991 Dr. Li was charged under the Criminal Code of Canada with a sexual offence against GTS. Publicity regarding the charge brought forth four other complainants.

In June 1992 Dr. Li was acquitted by a jury of all the charges.

In October 1994 the College issued a Notice of Hearing containing allegations of failure to maintain the standard of the profession and sexual impropriety.

As a result of the acquittal, the testimony of the complainants and the explanations given at the trial by Dr. Li the College came to an agreement with Dr. Li's counsel that Dr. Li would plead guilty to professional misconduct for failing to maintain the standard of practice of the profession and a penalty was agreed upon.

Dr. Li's plea was based on the totality of the conduct in question and not on any single act taken in isolation. Prosecution counsel accepted this position.

Counsel for the prosecution acknowledged that the alleged acts did not occur with any sexual intent or for the purpose of sexual gratification.

No evidence was lead with respect to the other allegations.

Two expert opinions were obtained, one from a family physician who would be considered a peer of Dr. Li and a gynecologic oncologist with a teaching position.

## **AGREED STATEMENT OF FACTS**

### **GTS**

It was alleged and Dr. Li admits, that in the course of his treatment of GTS who in 1991 was sixteen:

- a) he conducted a breast examination on GTS in an inappropriate manner;

- b) he made an inappropriate inquiry of GTS in an attempt to determine whether she was experiencing discharge from her breasts by asking if her boyfriend ever sucked her breasts and noticed discharge;
- c) he failed to provide appropriate protection for GTS's privacy by repeatedly lifting her t-shirt and exposing her breasts;
- d) he failed to provide GTS with a gown;
- e) he failed to maintain a proper record of the examination conducted upon GTS.

### **HUU**

It was alleged and Dr. Li admits, that in the course of his treatment of HUU who was ten to thirteen between 1986 and 1989:

- a) he made inquiries and conducted physical examinations upon HUU to assess her physical development without properly explaining in advance to her the nature and purpose of the examinations and inquiries;
- b) he conducted physical examinations in an inappropriate manner by checking for pubic hair growth by sliding his hand under HUU's pants;
- c) he failed to maintain growth charts or conduct biochemical investigations despite his concerns regarding HUU's physical development;
- d) he failed to maintain a proper record of the examinations conducted upon HUU.

### **SII - Mother of HUU**

Dr. Li admitted that in his manner of speech on one occasion he may have been overly personal and familiar with SII and therefore he behaved inappropriately.

### **YKI**

It was alleged and Dr. Li admits, that in the course of his treatment of YKI:

- a) he conducted a breast examination on YKI in an inappropriate manner by placing his hand inside her blouse rather than having her disrobe and gown;

- b) he made an inappropriate comment respecting YKI's sexual relations with other persons;
- c) he failed to maintain a proper record of the breast examinations conducted upon YKI.

### **FGL**

It was alleged and Dr. Li admits, that in the course of his treatment of FGL:

- a) by conducting breast examinations on FGL in an inappropriate manner by examining the patient from behind and by placing one hand on each breast as opposed to both hands simultaneously on one breast;
- b) by failing to provide FGL with a gown during these breast examinations;
- c) by making an inappropriate comment to FGL to the effect that her nipples were nice and her breasts were so perfect she could use them as a mold;
- d) by failing to maintain proper records of these breast examinations.

### **EXPERT OPINION**

The written expert opinion of the general practitioner was that Dr. Li failed to maintain the standard of practice of the profession in that: a) he demonstrated insensitivity to GTS and performed an inappropriate and irrelevant examination; b) he lacked sensitivity to HUU and failed to monitor or investigate properly the growth retardation; c) he conducted breast examinations upon YKI that were unreliable and not thorough and he failed to document the findings; d) he used an ineffective manner of performing breast examinations of FGL and made insensitive and inappropriate comments.

The gynecologic oncologist's opinion was that Dr. Li failed to maintain the standard in that a) he failed to maintain an adequate record of his examination of GTS and used an inappropriate means of assessing the possibility of pregnancy and asked her an inappropriate question; b) he asked inappropriate and insensitive questions of HUU and failed to document the grounds for such questions; c) he performed breast examinations in an inappropriate manner, failed to document his examinations and referred to his own

sexual activity; d) he performed breast examinations in an inappropriate manner, failed to document the problem and made inappropriate comments regarding the patient's breasts and nipples.

## **DECISION**

The Committee reviewed the details provided and expressed concern that the admitted offences might reflect sexual impropriety as well as falling below the standard. Prosecution counsel provided more details. She reiterated that on the basis of the information learned at the criminal trial, the offences constitute medical incompetence rather than impropriety. If the process were to be played out again with a full hearing regarding all the allegations she concluded the finding would be of a standards failure rather than sexual impropriety. Further, no more complainants had come forward despite the publicity given to this case.

Having considered all of the information provided, the Committee accepted the plea and made a finding of guilty of professional misconduct for falling below the standard of practice of the profession. The Committee made a finding of not guilty of disgraceful, dishonourable or unprofessional conduct, sexual impropriety, failure to maintain adequate records, and incompetence.

## **PENALTY**

### **Submissions by the Prosecution Counsel**

Having accepted that there was no sexual intent involved, prosecution counsel nevertheless submitted that a suspension for the purposes of general and specific deterrence and rehabilitation to address Dr. Li's deficiencies constitutes the basic structure of an appropriate penalty. A draft Order was presented which involved a three-month suspension, a reprimand, courses in breast examinations, communication skills and record keeping and the Physician Review and Enhancement Programme (PREP).

### **Submissions by the Defence Counsel**

The defence counsel agreed with the proposed penalty but submitted that a two-month suspension was more appropriate.

He reviewed the doctor's background. He graduated in 1979, interned for two years and then practised in Keswick from 1981 to 1993. Subsequently he moved his practise to Scarborough and then Newmarket.

A brief of letters from staff and patients was submitted.

Defence counsel reiterated that there was no sexual intent or gratification involved and the failure was in the execution of proper breast examinations. Dr. Li has aided the process by entering a guilty plea, is remorseful and is willing to be rehabilitated.

He submitted that no complainant's health was jeopardized by Dr. Li's failure to perform a proper breast examination.

In his view, Dr. Li has already suffered severely. He was arrested after the initial complaint and spent a night in jail. There has been extensive publicity and he has faced the opprobrium of the public and his colleagues. He was faced with a criminal trial and the College proceedings have been pending over a five-year period. He submitted that, under the circumstances and considering the nature of the offence, a two-month suspension would be appropriate. The courses are appropriate because his specific deficiencies are addressed.

## **DECISION REGARDING PENALTY**

The Committee considered the submissions and the draft Order regarding penalty and accepted the position of the prosecution that, under the circumstances, the appropriate penalty is a suspension at the upper end of the suggested range and the three courses and the assessment through PREP. These courses and PREP should remedy the doctor's deficiencies and determine if there are other problems with his practice. The penalty provides for specific and general deterrence, punishment and rehabilitation and therefore all

of the features of an appropriate penalty are present. Accordingly, the following Order was made:

- a) that Dr. Heung-Wing Li shall appear before this panel of the Committee to be reprimanded;
- b) that the Registrar of the College of Physicians and Surgeons of Ontario be directed to suspend Dr. Li's certificate of registration as a member of the College of Physicians and Surgeons of Ontario for a period of three (3) months commencing on July 28, 1996;
- c) that Dr. Li shall, during the term of the aforementioned suspension or at the earliest opportunity following the completion of the suspension:
  - (i) attend and pay for a mentoring programme on breast health and examinations of up to five days in length with Dr. VOB, who is Medical Director of the Preventative Oncology Program at PDH and Medical Co-ordinator of the Ontario Breast Screening Program; and an expert on breast health and breast disease, Dr. VOB will design a specialized programme for Dr. Li to address his deficiencies in breast examination;
  - (ii) attend and pay for a three-day communications skills course and the follow-up run by Dr. HNH and his team of University HEJ Faculty of Medicine educators;
  - (iii) attend and pay for a one-day record-keeping course and the follow-up run by Dr. HNH;
  - (iv) attend and pay for an assessment at the Physician Review and Enhancement Programme (PREP) at University CMO;
  - (v) complete the initial component of the three courses referred to in c)(i)(ii) and (iii) before PREP if practicable.



- (vi) complete all remediation that is identified as being required following completion of the PREP assessment; and
- (vii) make arrangements to have forwarded to either the Registrar of the College of Physicians and Surgeons of Ontario or the Director of Professional Enhancement, or their designates, reports of satisfactory completion of the remedial programmes listed in subparagraphs (i)-(vi) of this section of this Order.
- (d) that Dr. Li submit to a practice inspection by a College inspector two years after the completion of the suspension at Dr. Li's expense. The results of the inspection must be satisfactory to the Registrar.

In the event that any of the programmes set out in subparagraph (c) is unavailable for any reason, Dr. Li shall complete a suitable alternative programme within the Province of Ontario to be agreed upon by Dr. Li and the College, and failing agreement, as directed by the Registrar or his designate.

Dr. Li waived his right to appeal the decision and the reprimand was administered.