

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 of the College of Physicians
and Surgeons of Ontario, pursuant to Section 36(1)
of the **Health Professions Procedural Code** (“the Code”),
being Schedule 2 to 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. M. DAVIE (CHAIR)
DR. W. KING
S. DAVIS
DR. K. GUPTA
E. ATTIA (Ph.D.)

Hearing Date: July 30, 2007
Decision Date: July 30, 2007
Release of Written Decision Date: September 26, 2007

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on July 30, 2007. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its order as to penalty and costs, with written reasons to follow.

THE ALLEGATION

The Notice of Hearing alleged that Dr. Li 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 conduct or an act or acts 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 ALLEGATION

Dr. Li entered a plea of no contest to the allegation.

Rule 3.02(1) of the Rules of Procedure of the Discipline Committee states:

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 the proceeding only;
- (b) that the Discipline Committee can accept that those facts constitute professional misconduct or incompetence or both for the purposes of the proceeding only; and
- (c) that the Discipline Committee can dispose of the issue of what finding ought to be made without hearing evidence.

FACTS AND EVIDENCE

The following Agreed Statement of Facts was filed as an exhibit and presented to the Committee:

PART I: Statement of Facts

1. Dr. Heung-Wing Li (“Dr. Li”) is a general practitioner who practises in Scarborough, Ontario.
2. On January 19, 2005, Dr. Li signed an undertaking (the “Undertaking”) with the College of Physicians and Surgeons of Ontario (the “College”). The Undertaking stated in part as follows:

...

(iv) I am aware of and agree to abide by the restrictions on my certificate of registration pending my Discipline Hearing which are:

a) All of Dr. Li’s examinations of female patients age 10 years or older must be in the company of a member of a regulated health profession (hereinafter referred to as the “Monitor”);

b) The Monitor shall satisfy the Registrar that s/he has reviewed the Notice of Hearing, is aware of the issues which will be before the Discipline Committee, and has agreed to report any untoward conduct on Dr. Li’s part promptly to the Registrar;

c) The Monitor shall keep a log of the examinations at which s/he is present and shall provide a copy of the log on a bi-weekly basis to the College;

d) All of Dr. Li’s examinations of female patients under the age of 10 years must be in the company of the Monitor or in the company of the child’s parent or guardian;

...

A copy of the Undertaking is attached at Tab 1 [to the Agreed Statement of Facts].

3. On January 20, 2005, counsel for the College wrote to counsel for Dr. Li confirming receipt of the executed copies of the Undertaking. In her letter, counsel for the College stated:

“I have forwarded the undertaking to the Registrar who will register the terms and conditions on Dr. Li’s certificate immediately.
As you are aware, under the terms of the undertaking, Dr. Li must not see patients ten years of age or older until a monitor has been appointed and approved. I trust that you have explained this to him.”
4. On January 25, 2005, counsel for Dr. Li wrote to counsel for the College proposing two people to act as monitors pursuant to the Undertaking. Counsel noted in his letter that one of the proposed monitors, Ms A., was a member of the College of Nurses. He also noted that the other proposed monitor, Ms B., had been trained as a medical laboratory technician and had applied for membership in the College of Medical Laboratory Technologists. Dr. Li had hired these individuals to function as chaperones while he was seeing female patients and they had been employed prior to his signing the Undertaking on January 19, 2005. Counsel stated that he would advise as soon as he learned whether Ms B.’s application had been accepted.
5. Attached to this January 25, 2005 letter were signed letters from each of Ms A. and Ms. B. stating that they had reviewed the Notice of Hearing and Dr. Li’s Undertaking and were prepared to act as monitors for the purposes of the Undertaking. Ms B’s letter stated that she had applied for membership in the College of Medical Laboratory Technologists of Ontario.
6. On January 31, 2005, counsel for the College wrote to counsel for Dr. Li advising him that Ms A. was approved as a monitor for the purpose of Dr. Li’s Undertaking. Ms B. was not approved as a monitor as she was not a member of a regulated health profession.

7. Ms. A. acted as a monitor for Dr. Li for physical examinations of female patients on approximately six days between January 21, 2005 and January 31, 2005 before she was approved as a monitor by the College.
8. Ms. B. acted as a monitor for Dr. Li's physical examination of female patients on approximately four days before Dr. Li's counsel received College counsel's letter of January 31, 2005 stating that only Ms A. was approved as a monitor.
9. Ms B. also acted as a monitor for Dr. Li's physical examinations of female patients on February 3, 2005, three days after his counsel's receipt of the January 31, 2005 letter stating that only Ms A. was approved as a monitor. On that date, Ms A was unavailable to act as a monitor for personal reasons.

PART II: No Contest and Admission

11. Dr. Li pleads no contest to the facts as set out in paragraphs 1 through 8 above as constituting professional misconduct.
12. Dr. Li admits the conduct set out in paragraph 9 above and that his conduct as set out therein was in breach of his Undertaking, something reasonably regarded by the profession as disgraceful, dishonourable and unprofessional and therefore constitutes professional misconduct.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. Having regard to these uncontested facts and Dr. Li's admission of professional misconduct as set out in paragraph 12 of the Agreed Statement of Facts, the Committee found that Dr. Li committed an act of professional misconduct under paragraph 1(1)33 of O. Reg. 856/93 in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

In particular, the facts described in the Agreed Statement of Facts demonstrated a significant breach of Dr. Li of an important undertaking to the College to practice only with a monitor approved by the College in the circumstances set out in the undertaking.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission on penalty, the terms of which were a three-month suspension of Dr. Li's certificate of registration, a reprimand and an order for costs in the amount of \$2,500.00.

Counsel for the College made submissions in support of the jointly proposed penalty. She reminded the Committee that the goals of the penalty include protection of the public, specific and general deterrence and an expression of the abhorrence of the profession for the conduct of the member. She submitted that the proposed penalty accomplished these goals. She stressed the seriousness of the conduct in that the member contravened his undertaking to the College in using an inappropriate monitor, before and after being advised of her unacceptability. Furthermore, this action took place despite a history of prior misconduct which had resulted in a discipline hearing and penalty in 1996. Counsel submitted that this history justified a more serious penalty than such acts might otherwise incur. She reminded the Committee that the College needs to be in a position to be seen to be enforcing undertakings from its members.

Subsequent to the events which were the subject of these allegations, in a decision released January 12, 2006, Dr. Li was found to have committed professional misconduct for events similar to those which resulted in the positive finding in 1996. A penalty decision was rendered October 2, 2006. Aspects of the 2006 decision are currently under appeal. While both supported the jointly submitted penalty, counsel for the College and counsel for the member differed in their opinion of the relevance of the 2006 finding to the Committee's consideration of the appropriateness of the penalty. Counsel for the member stressed that the fact that these events had taken place prior to the 2006 decision meant that the member should not be considered a "repeat offender" and that, in any case, the 2006 decision is under

appeal. Counsel for the College presented two court decisions supporting the acceptability of considering events out of sequence in the determination of overall "governability."

Whatever its importance in law, the issue of the relevance of the timing of the 2006 decision did not weigh on the Committee's consideration of the appropriateness of this penalty. It was only considered in order to understand the context in which the undertaking which was breached in this case was given (i.e. it was given pending the disciplinary hearing which resulted in the 2006 decision). Given the length and the seriousness of his history with the College, Dr. Li could hardly fail to be aware of the importance of adhering to an undertaking given to the College given that it was made in the context of another disciplinary hearing. His actions on February 3, 2005 demonstrated, at least, disregard and, at most, disdain for his undertakings to the College.

Both counsel filed mitigating factors to be considered. The plea of no contest saved the College the time and expense of a more lengthy hearing. Additionally, the fact that Dr. Li examined female patients in the presence of a chaperone, albeit one who had not been qualified by the College, indicated that there was no intent to put the public at risk.

Both counsel filed prior decisions of the Discipline Committee in which similar circumstances had resulted in similar penalties. Both reminded the Committee of its obligation to accept a jointly submitted penalty except where such a submission is so unreasonable or contrary to the public interest that its acceptance would bring the administration of justice into disrepute.

The Committee accepted that the jointly submitted penalty was appropriate and that it served the goals outlined above. The significant suspension was felt to be appropriate, particularly in light of the fact that Dr. Li had breached an undertaking the significance of which should have been obvious, considering his prior history. The seriousness of this breach called for a serious penalty. Compliance with undertakings made to the College, the governing body of the profession, is critical to the ability of the College to carry out its mandate of public protection.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar suspend Dr. Li's certificate of registration for a period of three (3) months. The suspension shall be from July 30, 2007 until 12:01 a.m. on October 30, 2007.
2. Dr. Li appear before the panel to be reprimanded.
3. Dr. Li pay the College costs in the amount of \$2,500.00 within thirty (30) days of the date of this Order.
4. The results of this proceeding be included in the register.

Dr. Li waived his right to an appeal under subsection 70(1) of the Code and the Committee administered the public reprimand.