

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Jimmy Chi Ming Poon, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of the patients or any information that could disclose the identity of the patients 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 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: Poon (Re)

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

IN THE MATTER OF a Hearing directed by
the Complaints Committee and the Executive Committee
of the College of Physicians and Surgeons of Ontario
pursuant to ss. 26(2) and 36(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. JIMMY CHI MING POON

PANEL MEMBERS:

**DR. L. THURLING
DR. M. DAVIE
E. COLLINS
DR. P. CHART
S. BERI**

Hearing Date: September 29, 2008
Decision/Release Date: September 29, 2008
Release of Written Reasons Date: October 30, 2008

PUBLICATION BAN

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 September 29, 2008. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty order in writing with written reasons to follow.

THE ALLEGATION

The Notice of Hearing alleged that Dr. Poon 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 1(1)1 of O. Reg. 856/93, in that he contravened a term, condition or limitation on his certificate of registration.
3. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he failed to maintain the standard of practice of the profession.

The Notice of Hearing also alleged that Dr. Poon is incompetent as defined by subsection 52(1) 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, in that his care of patients displayed a lack of knowledge, skill or judgment or disregard for the welfare of his patients of a nature or to an extent that demonstrates that he is unfit to continue to practise or that his practice should be restricted. The Notice of Hearing was filed as Exhibit 1.

RESPONSE TO THE ALLEGATIONS

At the commencement of the hearing the College withdrew allegations 1 and 2 and the allegation of incompetence in the Notice of Hearing. The College proceeded with allegation 3.

Dr. Poon entered a plea of no contest to allegation 3 in the Notice of Hearing, that he committed an act of professional misconduct, in that he failed to maintain the standard of practice of the profession.

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 and Plea of No Contest was filed as Exhibit 2 and presented to the Committee:

PART I – FACTS

Background

1. Dr. Jimmy Chi Ming Poon (“Dr. Poon”) is a member of the College of Physicians and Surgeons of Ontario (the “College”) who received a certificate of registration

authorizing independent practice in Ontario in 1996. He is a member of the College of Family Physicians.

2. Dr. Poon divides his practice between a family practice and a cosmetic practice.

The Complaint

3. The College received a letter of complaint dated September, 2006 pertaining to Dr. Poon's care of patient "A" in relation to various cosmetic surgical procedures.

The College's Initial Expert Evidence

4. Dr. Z, a certified plastic surgeon, was asked to opine on Dr. Poon's care and treatment of patient "A". Dr. Z reviewed various documents, including the letter of complaint, the response by Dr. Poon and patient "A's" medical chart and concluded that Dr. Poon failed to maintain the standard of practice of the profession in his performance of cosmetic surgical procedures. A copy of Dr. Z's report dated May, 2007 is attached as Schedule A [to the Agreed Statement of Facts and Plea of No Contest].

The Section 75(a) Investigation

5. After receiving Dr. Z's report, the Executive Committee approved of the appointment of investigators to conduct a broader investigation into Dr. Poon's cosmetic surgery practice under section 75(a) of the Health Professions Procedural Code.

The College's Further Expert Evidence

6. Dr. Y and Dr. X, both certified plastic surgeons, were asked to opine on Dr. Poon's care and treatment of various patients in relation to cosmetic surgical procedures. After reviewing approximately 35 charts and interviewing Dr. Poon, Dr. Y concluded that Dr. Poon failed to maintain the standard of practice of the profession in his performance of cosmetic surgical procedures. After reviewing the same charts as those reviewed by Dr. Y, Dr. X concluded that Dr. Poon failed to maintain the standard of practice of the profession in his performance of cosmetic surgical procedures, his administering of anesthesia for cosmetic surgical procedures and in his charting relating to cosmetic surgical procedures. A copy of Dr. Y's report dated January, 2008 is

attached as Schedule B [to the Agreed Statement of Facts and Plea of No Contest]. A copy of Dr. X's report dated April, 2008 is attached as Schedule C [to the Agreed Statement of Facts and Plea of No Contest].

PART II – PLEA OF NO CONTEST

7. Dr. Poon pleads no contest to the facts in paragraphs 1 to 6 above and pleads no contest to the allegation contained in the Notice of Hearing that he committed an act of professional misconduct under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he failed to maintain the standard of practice of the profession.

FINDING

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts and Plea of No Contest. Having regard to these uncontested facts, the Committee accepted Dr. Poon's plea of no contest and found that he committed an act of professional misconduct, in that he failed to maintain the standard of practice of the profession under paragraph 1(1)2 of Ontario Regulation 856/93.

REASONS FOR FINDING

In making the finding of professional misconduct, the Committee had particular regard for the following facts contained in the Expert Reports appended to the Agreed Statement of Facts:

- Dr. Poon demonstrated judgment that was below standard when he performed cosmetic surgery for inappropriate reasons on high-risk patients in an unsafe setting;
- In the performance of cosmetic surgery Dr. Poon fell below the accepted standard when (i) he carried out multiple and extensive procedures resulting in excessive operative times; (ii) he removed excessive amounts of tissue; (iii) he failed to acceptably record and monitor fluid balance; (iv) he used inappropriate amounts

of analgesia/anesthesia; (v) he had inadequate staffing; and (vi) his medical records were deficient;

- Management practices with respect to post-operative care were below standard in that Dr. Poon discharged patients after a short period of time with no monitoring; and
- Dr. Poon failed to recognize his limitations and extended his practice to do extensive cosmetic surgical procedures when he had no formal surgical certification and no proven competence.

Based on the above, Dr. Poon has clearly demonstrated a lack of judgment and the Committee was satisfied to the requisite legal standard that Dr. Poon failed to meet the standard of practice of the profession.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty. That joint submission proposed the imposition of certain terms, conditions and limitations on Dr. Poon's Certificate of Registration. Such terms included prohibiting him from performing all surgical procedures, including all cosmetic surgical procedures and all minor office surgical procedures, except for certain itemized procedures. He would be limited to performing surgical assists only in a hospital-based setting in the presence of a certified surgeon. He would be required to undergo the PREP™ program pertaining to his family practice and abide by all reasonable recommendations made as a result of PREP™. If he received a Category 3 result or better from PREP™ as a part of his family practice, he would be permitted to perform certain itemized minor office procedures, so long as they are not performed on the face or neck and provided that these procedures are billable to OHIP. Finally, he would be required to submit to unannounced inspections by the College.

The Committee heard submissions from both counsel in support of this jointly proposed order.

With respect to penalty, the Committee agreed with both counsel that protection of the public was the most significant consideration. However, specific deterrence and upholding the reputation of the profession were also important and applicable principles.

Dr. Poon's lack of attention to professional standards offends the profession and his failure to respect necessary vigilance requires that he not practise cosmetic surgery.

The prohibition of all cosmetic surgical procedures in the proposed penalty addresses substandard care in the conduct of cosmetic surgery and provides for public protection. Furthermore the restrictions placed on his ability to surgically assist preclude his independent action as he is required to work under direction and in the presence of a certified surgeon

In addition, the issue of judgment is addressed by the requirement for Dr. Poon to undertake the PREP™ course, abide by subsequent recommendations and to have his practice subject to unannounced inspections of charts and practices.

The Committee is mindful of the fact that the law requires that a joint submission on penalty made by adversarial parties should be accepted unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

Given all the circumstances of this case the Committee accepted that the jointly proposed penalty was appropriate and that it served the goals outlined above.

ORDER

Therefore, the Discipline Committee ordered and directed that:

1. The Registrar impose immediately the following terms, conditions and limitations on Dr. Poon's Certificate of Registration:
 - (a) Dr. Poon shall be prohibited from performing all surgical procedures and be limited to surgical assists only, as defined in paragraph (b). For greater certainty, "all surgical procedures" includes, but is not limited to, all

cosmetic surgical procedures and all minor office surgical procedures except for those procedures set out in paragraph (d);

- (b) Dr. Poon may practise as a surgical assistant only in a hospital-based setting and when a Royal College of Physicians and Surgeons of Canada certified surgeon, who is approved by and a member of the College of Physicians and Surgeons of Ontario and who is aware of the terms, conditions and limitations on Dr. Poon's certificate of registration is performing the surgery and is in attendance throughout;
- (c) At his own expense, Dr. Poon shall undergo the Physician Review and Enhancement Program ("PREP™") pertaining to his family practice and shall abide by any and all reasonable recommendations made as result of PREP™. Dr. Poon shall participate in the PREP™ course within 6 weeks of the date of this Order;
- (d) If Dr. Poon receives from PREP™ a Category 3 result or better, as a part of his family practice he shall be permitted to perform the following minor office procedures so long as they are not performed on the face or neck and provided the procedures are billable to OHIP :
 - i. minor diagnostic procedures on superficial lesions less than 2 cm, under local anesthetic, for medical, not cosmetic reasons;
 - ii. incisions and drainage of superficial abscesses; and
 - iii. suturing of uncomplicated superficial lacerations; and
- (e) Dr. Poon shall submit to, and not interfere with, unannounced inspections of his practices and patients' charts by College representatives for the purposes of his compliance with these terms, conditions and limitations on his certificate of registration.

2. The results of this proceeding to be included in the register.