

Indexed as: Yeung, C.K. (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. CLEMENT KA-CHUN YEUNG

PANEL MEMBERS:

DR. E. STANTON (CHAIR)
D. DOHERTY
DR. P. TADROS
S. BERI
DR. F. SLIWIN

Hearing Date:	January 23, 2012
Decision Date:	January 23, 2012
Release of Written Reasons:	February 24, 2012

DECISION AND REASONS FOR DECISION

The Discipline Committee (the “Committee”) of the College of Physicians and Surgeons of Ontario heard this matter at Toronto on January 23, 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. Clement Ka-Chun Yeung committed an act of professional misconduct:

1. under clause 51(1)(a) of the Health Professions Procedural Code (“the Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that he has been found guilty of an offence that is relevant to his suitability to practice;
2. under paragraph 1(1)33 of O. Reg. 856/93, in that he has engaged in conduct or 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.

RESPONSE TO THE ALLEGATIONS

Dr. Yeung admitted the allegations of professional misconduct in the Notice of Hearing, that he has been found guilty of an offence that is relevant to his suitability to practice, and that he has engaged in conduct or 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.

FACTS AND EVIDENCE

The following Agreed Statement of Facts and Admission was filed as an exhibit:

PART I – FACTS

Background

1. Dr. Yeung is a family doctor, currently practising in Hong Kong.
2. Dr. Yeung's certificate of registration for independent practice was issued by the College of Physicians and Surgeons of Ontario (the "College") on October 16, 1980. At that time, Dr. Yeung was also licensed to practice medicine in Saskatchewan and in the States of California and Hawaii.
3. Dr. Yeung practised family medicine in Honolulu, Hawaii from 1980 – 2007. Throughout this time, Dr. Yeung maintained his certificate of registration with the College, with the exception of a two-week period in 2002 when his license was suspended for failure to pay his annual membership fee.
4. In 2007, Dr. Yeung disclosed to the College in his Annual Renewal Form that he had been charged in the State of Hawaii with offences related to prescribing medication to an undercover agent posing as a patient.
5. In May 2008, on the instructions of Dr. Yeung, the College received a letter from a lawyer in Toronto advising that Dr. Yeung had been convicted in the State of Hawaii of charges relating to the dispensing of controlled substances to an undercover agent posing as a patient.

Court Proceedings in Hawaii and Underlying Facts

6. On March 29, 2006, Dr. Yeung was criminally charged in Hawaii.
7. On February 23, 2007, Dr. Yeung entered into a plea agreement in which he plead guilty to the following two charges:
 - a) On or about June 14, 2002, in the District of Hawaii, the defendant

KACHUN CLEMENT YEUNG, M.D., did knowingly and intentionally distribute and dispense outside the course of professional medical practice and not for a legitimate medical purpose approximately 1,400 milligrams of Oxycodone, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Section 841(a)(1); and

- b) On or about June 21, 2002, in the District of Hawaii, the defendant KACHUN CLEMENT YEUNG, M.D., did knowingly and intentionally distribute and dispense outside the course of professional medical practice and not for a legitimate medical purpose approximately 800 milligrams of Oxycodone, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Section 841(a)(1).

8. A brief outline from the plea agreement of what lead to these two charges is as follows:

- a) On June 14, 2002, at approximately 7:15 p.m., Dr. Yeung met with an undercover DEA agent in [a parking lot] and prescribed 1,400 milligrams of Oxycodone (seventy – 20 milligram tablets). The undercover agent had met with Dr. Yeung on prior occasions, and Dr. Yeung believed him to be a patient named Mr. X. Dr. Yeung drove to the meeting in his vehicle. Dr. Yeung met with the undercover agent for approximately five minutes in his vehicle. After the prescription was written, Dr. Yeung requested payment of \$350.00. The agent paid Dr. Yeung \$400.00 in undercover funds for which no receipt for payment was issued.
- b) On June 21, 2002, at approximately 6:47 p.m., Dr. Yeung met with the same undercover DEA agent in [a parking garage] and prescribed 800 milligrams of Oxycodone (forty – 20 milligram tablets). Dr. Yeung met with the undercover agent for approximately ten minutes next to his vehicle in the garage. After the prescription was written, Dr. Yeung and

the undercover agent agreed on a \$450.00 payment for the “house call.” The agent paid Dr. Yeung \$450.00 in undercover funds for which no receipt for payment was issued.

9. The undercover agent was known to Dr. Yeung as Mr. X. Dr. Yeung treated Mr. X over a ten-month period and, on each visit, Mr. X paid Dr. Yeung in cash, since he did not have Health Insurance. Dr. Yeung’s medical records for Mr. X are attached to the Agreed Statement of Facts and Admissions as Schedule “A”.

10. Despite the wording of the two charges, Dr. Yeung did not provide narcotic medications to Mr. X directly. Rather, he provided written prescriptions for dosages and quantities that are within a reasonable range for a patient suffering with chronic back pain. The money Dr. Yeung received from Mr. X and referred to in paragraph 8, above, was payment for medical services provided on two occasions.

11. On August 30, 2007, on behalf of the United States District Court for the District of Hawaii, the Chief Judge, the Honorable Helen Gillmor, accepted Dr. Yeung’s guilty plea and found Dr. Yeung guilty of the two counts noted in paragraph 7, above. Attached to this Agreed Statement of Facts and Admissions as Schedule “B” is a certified copy of the Transcript of Proceedings held on August 30, 2007.

12. The sentence imposed by Chief Judge Gillmor included that Dr. Yeung:

- a) Shall be imprisoned for one year and one day;
- b) Shall pay a \$10,000.00 fine within 14 days;
- c) Shall pay a \$200.00 assessment fee;
- d) Shall submit to removal proceedings, including deportation or exclusion, as required by the Department of Homeland Security, and shall not enter the United States without proper written authorization, commencing immediately upon conclusion of his imprisonment; and
- e) Shall surrender his Drug Enforcement Administration controlled substance

registration.

The Judgment of Chief Judge Gillmor is attached as Schedule “C” to this Agreed Statement of Facts and Admissions.

13. Dr. Yeung was incarcerated in Hawaii from January 11, 2008 to November 24, 2008 and was immediately deported from the United States at the conclusion of his incarceration.

14. Dr. Yeung returned to Ontario in December 2008 where he resided until April 2009, at which time he moved to Hong Kong. Dr. Yeung held an unrestricted certificate of registration in Ontario during that period, but elected not to practice medicine in Ontario until the issues surrounding his criminal conviction in Hawaii could be addressed by the College.

Proceedings of the State of Hawaii Board of Medical Examiners

15. As a result of the criminal conviction, the Board of Medical Examiners, Department of Commerce and Consumer Affairs in the State of Hawaii (the “Board of Medical Examiners”) conducted an investigation regarding the conduct that was the subject of his sentencing in the criminal proceedings.

16. On or about June 3, 2008, Dr. Yeung entered into a settlement agreement with the Board of Medical Examiners wherein he admitted that his conviction for violations of the Federal Controlled Substances Act constituted a violation of the Hawaii Revised Statutes. Specifically, he admitted to violating Chapter 453-8(a)(12), which pertains to a conviction of a penal offense substantially related to the qualifications, functions or duties of a physician (similar to section 51(1)(a) of the Health Professions Procedural Code in Ontario). Attached to this Agreed Statement of Facts and Admissions at Schedule “D” is a copy of the Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board’s Final Order (“Settlement Agreement and Final Order”).

17. The terms of the Settlement Agreement and Final Order included that:

- a) Dr. Yeung agree to the voluntary revocation of his medical license, which took effect on January 31, 2008; and
- b) Dr. Yeung agree not to apply for a new license for at least five (5) years after the effective date of the revocation.

18. Pursuant to his sentencing, Dr. Yeung was to be deported from the United States at the end of his period of incarceration and would no longer be able to practice medicine in Hawaii or elsewhere in the United States.

19. The Board of Medical Examiners approved the Settlement Agreement and Final Order on July 18, 2008.

Action Taken in Other Jurisdictions

20. As of January 8, 2009, Dr. Yeung's licence with the Medical Board of California was suspended based on suspension or revocation in another state, and on the basis of the felony conviction.

PART II – ADMISSIONS

21. Dr. Yeung admits the facts set out above and admits that he has been found guilty of an offence that is relevant to his suitability to practice.

22. Dr. Yeung also admits that the facts set out above demonstrate that he engaged in conduct or 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.

23. Dr. Yeung admits that this constitutes professional misconduct under clause 51(1)(a) of the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act*, 1991, and under paragraph 1(1)33 of O. Reg. 856/93, in that he has engaged in conduct or 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.

FINDINGS

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 found that Dr. Yeung had committed an act of professional misconduct, in that he has been found guilty of an offence that is relevant to his suitability to practice, and in that he has engaged in conduct or 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.

PENALTY AND REASONS FOR PENALTY

EVIDENCE ON PENALTY

The following Agreed Statement of Facts on Penalty was filed as an exhibit:

Additional Facts Regarding the Treatment of the Undercover Agent (Mr. X)

1. Mr. X became Dr. Yeung's patient in September 2001.
2. Based on his assessment over the course of 20 medical visits, Dr. Yeung treated Mr. X for chronic back pain with prescription narcotic medication.
3. During his treatment of Mr. X, Dr. Yeung took steps to decrease the risks associated with prescribing narcotic medication, for example, having Mr. X complete an Opioid Treatment Agreement.
4. In addition, in March 2002, Dr. Yeung requested that Mr. X see another physician for the purposes of obtaining an assessment of his persistent back pain and he requested a written report of that assessment. Dr. Yeung never received an assessment.
5. In his practice in Honolulu, Dr. Yeung treated patients who did not have any form

of medical insurance that would cover assessment and/or treatment by a family physician. These patients would generally pay for his services in cash.

6. Mr. X did not have medical insurance and paid Dr. Yeung in cash for each appointment.
7. Dr. Yeung did not profit beyond receiving money for medical services rendered to Mr. X.

Dr. Yeung's Post-Charge Conduct

8. Dr. Yeung was forthcoming with the College regarding his criminal charges and professional regulatory proceedings in his Annual Renewal Forms throughout the relevant period of time.
9. Dr. Yeung cooperated with the College during its investigation and following referral of allegations to the Discipline Committee.
10. When Dr. Yeung returned to Ontario in early 2009, he voluntarily refrained from engaging in the practice of medicine in Ontario, despite having an unrestricted Certificate of Registration. He did so to allow the College the opportunity to investigate and address the issues related to his conviction in Hawaii.
11. Dr. Yeung has provided letters of support from various health care professionals and patients pertaining to his practice in Hawaii. Copies of these thirty-nine (39) letters are attached to this Agreed Statement of Facts on Penalty as Schedule "A".
12. Dr. Yeung has also provided letters from clinic directors, nurses and colleagues in Hong Kong which state that he is a responsible, careful and experienced physician; and from patients in Hong Kong, stating that he is professional, caring and thorough in his medical practice. Copies of these thirteen (13) letters of support are attached to this Agreed Statement of Facts on Penalty as Schedule "B".

DECISION AND REASONS ON PENALTY

Counsel for the College and counsel for Dr. Yeung presented a joint submission as to an appropriate penalty and costs order, which included a six month suspension, terms, conditions and limitations on Dr. Yeung's certificate of registration, a public reprimand and costs at the tariff rate for a one day hearing. The proposed terms, conditions and limitations include that:

- Dr. Yeung participate in both the prescribing and ethics courses
- Dr. Yeung keep a log of all narcotics for one year
- Dr. Yeung practise under a clinical supervisor for one year
- Dr. Yeung undergo an assessment of his practice one year after completing the term of supervision.

The College submitted that Dr. Yeung's conduct, which was considered trafficking in the United States, would not have been considered criminal conduct in Ontario. She also cautioned the Committee not to place any significance on the fact that Mr. X paid in cash for all his medical visits, as did other patients. Although in Ontario, the universal health care system ensures that no cash is charged for a medical visit, it is not improper to bill patients for their care in the United States or for patients to pay in cash. Dr. Yeung did not profit in any improper way in his treatment of Mr. X. Dr. Yeung was treating Mr. X over a ten-month period for chronic back pain with reasonable doses of narcotics. Dr. Yeung took steps to decrease the risks associated with the use of narcotic medication with this patient.

The mitigating factors in this case include the following:

1. Dr. Yeung has paid a significant price for the misconduct, which occurred ten years ago, including a one year prison sentence and deportation.
2. Dr. Yeung has cooperated with every step of the investigation in Ontario.
3. Dr. Yeung voluntarily refrained from practice in Ontario during the College investigation.
4. Dr. Yeung has admitted to the allegations and has agreed on penalty, thereby saving the College the costs of a full contested hearing.

5. Dr. Yeung has no prior history with the College.

The Committee agrees that the proposed penalty is appropriate given the principles of public protection, public confidence in the professions' ability to self-regulate, general and specific deterrence, upholding the reputation of the profession, and rehabilitation of the member.

The Committee considered the letters of reference provided by Dr. Yeung. The letters were entered into evidence on agreement by both parties. The writers clearly had knowledge of Dr. Yeung's misconduct. The Panel was impressed that the letters substantiated Dr. Yeung's quality and care as a physician. As well, the Panel considered the case of *Re Tucker*, [2000] O.C.P.S.D. No. 21, a decision of this Committee. The Panel agreed that the penalty proposed in Dr. Yeung's case was in line with the *Tucker* case, which was similar in nature.

The Committee retains an overriding discretion to accept or reject a joint submission on penalty by the parties. The Committee is cognizant, however, that it should not depart from a joint submission unless the penalty proposed is so disproportionate to the findings that to accept it would be contrary to the public interest and bring the administration of justice into disrepute.

Dr. Yeung has already paid a harsh penalty for his misconduct, which occurred ten years ago. The Committee queried whether the penalty agreed upon between the parties might in fact be somewhat severe given the facts before us. The Committee respects, however, that the agreed statements of fact, admission and joint penalty proposal are the product of negotiations between experienced counsel. The Committee determined that imposing the jointly proposed penalty would not bring the administration of justice into disrepute.

ORDER

Therefore, the Committee ordered and directed that:

1. the Registrar suspend Dr. Yeung's certificate of registration for a period of six (6) months, to commence January 23, 2012.
2. the Registrar place the following terms, conditions and limitations on Dr. Yeung's certificate of registration:
 - (i) that Dr. Yeung shall successfully complete the College's Physician's Prescribing Skills course and shall successfully complete an educational program in Ethics, both no later than one (1) year from the date he commences practice in Ontario;
 - (ii) that Dr. Yeung shall keep a log of all Narcotics Drugs and Narcotic Preparations prescribed for a period of one (1) year ("Narcotics Log") from the date he commences practice in Ontario;
 - (iii) that Dr. Yeung shall practice under a Clinical Supervisor acceptable to the College for a period of one (1) year from the date he commences practice in Ontario; such supervision shall take place in a setting(s) which is acceptable to the College, and shall consist of, at minimum, monthly reviews of patient charts and of the Narcotics Log for the first three (3) months; and, thereafter, at the discretion of the Clinical Supervisor, quarterly reviews with quarterly reporting to the College throughout the supervision period; and
 - (iv) that Dr. Yeung will undergo an assessment of his practice, including his narcotics prescribing, approximately one (1) year after the completion of the term of clinical supervision set out in paragraph 3(iii).
3. Dr. Yeung appear before the panel to be reprimanded.

4. Dr. Yeung pay costs to the College in the amount of \$3,650 within thirty (30) days from the date of this Order.

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