

Indexed as: Le, David (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 26(2) 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. DAVID LE

PANEL MEMBERS:

DR. C. CLAPPERTON (CHAIR)
DR. E. ATTIA (Ph.D.)
DR. F. SLIWIN
DR. B. TAA (Ph.D.)
DR. E. STANTON

Hearing Date:	May 4, 2010
Decision Release Date:	May 4, 2010
Release of Written Reasons:	July 19, 2010

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 May 4, 2010. 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 with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing alleged that Dr. Le committed acts of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code (the “Code”), Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, in that he sexually abused a patient; and
2. under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, 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. Le did not contest the second allegation in the Notice of Hearing, 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. Counsel for the College withdrew the first allegation in the Notice of Hearing. Counsel for the College also indicated that the College was not proceeding with the allegations with respect to patient C.

FACTS AND EVIDENCE

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

PART 1 - FACTS

1. Dr. Le is a family practitioner who has a general practice in North York.

Patient A

2. The first complainant, patient A, was 16 years old in October of 2007. She is Vietnamese-Canadian. At the material time, patient A had never undergone an intimate exam before.
3. Dr. Le had been patient A's family physician since November 1991, when she was an infant. He saw her regularly for a range of complaints.
4. In October 2007, patient A attended Dr. Le's office complaining of abdominal pain, having swallowed the metal pin from the piercing in her lip. She also complained of constipation for two days.
5. After taking a history from patient A, Dr. Le conducted a physical examination. Her abdominal pain was central and in the left lower quadrant. An x-ray of her abdomen was negative.
6. Patient A was alone in the room with Dr. Le.
7. Dr. Le recalls briefly mentioning to patient A that he was going to conduct a rectal exam. Patient A does not recall Dr. Le telling her anything about a rectal exam.
8. Dr. Le was aware that Patient A had not previously undergone a rectal or any other type of intimate exam. Notwithstanding this, Dr. Le did not:
 - a) Explain to patient A what a rectal exam entails;
 - b) Explain why he viewed a rectal exam as appropriate under the circumstances; or
 - c) Ascertain whether patient A understood and was comfortable with what he was about to do.

9. At no point in time did patient A indicate to Dr. Le that she was consenting to a rectal exam.
10. Dr. Le admits that he failed to obtain informed consent from patient A to conduct a rectal exam.
11. Dr. Le asked patient A to roll over on the examination table and take her pants down. He put on gloves and put a drape over patient A's lower body.
12. Although patient A did lie down on her left side, she only pulled her pants down slightly and did not remove her underwear. Stating "all of it", Dr. Le took hold of patient A's underwear. He pulled it down to expose her buttocks and rectal area, and began conducting a rectal exam.
13. Patient A immediately objected to what he was doing and told him to stop. She got up from the table, and pulled her pants up.
14. Patient A felt violated and confused by the examination performed by Dr. Le and immediately called her mother.

Patient B

15. Patient B is also Vietnamese-Canadian. She was 16 years old in June, 2000. At the material time, patient B had never undergone an intimate exam before.
16. Patient B saw Dr. Le for one visit only, in June 2000. She complained of abdominal pain for two days as well as some nausea and constipation for three days.
17. Dr. Le took a history and then performed a physical examination. Patient B's temperature was slightly elevated at 38 degrees but her other vital signs were normal. Her abdomen seemed slightly distended with some tenderness in the left lower quadrant. Bowel sounds were present.

18. Dr. Le was concerned about a number of possible diagnoses, including a ruptured ovarian follicle, mesenteric adenitis and a possible incomplete bowel obstruction, although he felt that patient B most likely had constipation.
19. Patient B was alone in the room with Dr. Le.
20. Dr. Le recalls briefly mentioning to patient B that he was going to conduct a rectal exam. Patient B denies that Dr. Le said anything about a rectal exam.
21. Dr. Le did not:
 - a) Ascertain whether patient B had ever undergone an intimate exam of this nature before;
 - b) Explain to patient B what a rectal exam entails;
 - c) Explain why he viewed a rectal exam as appropriate under the circumstances; or
 - d) Ascertain whether patient B understood and was comfortable with what he was about to do.
22. At no point in time did patient B indicate to Dr. Le that she was consenting to a rectal exam.
23. Dr. Le admits that he failed to obtain informed consent from patient B to conduct a rectal exam.
24. Dr. Le asked patient B to roll over on the examination table and take her pants down, and he put a drape over patient B's lower body. When patient B began removing her pants, Dr. Le took hold of the rear pocket of her jeans and pulled them down to expose her buttocks and rectal area. He then performed a rectal examination by putting his finger in patient B's anus which caused patient B discomfort.
25. After he had finished, he removed the Vaseline from the area with a paper cloth, and removed his gloves. Patient B pulled up her pants, dressed, and stood up.

26. Following the examination, patient B felt violated and confused about her interaction with Dr. Le. She did not understand the nature and purpose of the examination he had conducted, and she had not expected such an exam to take place.
27. Dr. Le acknowledges that he did not communicate clearly and adequately with patient A and patient B regarding the nature and purpose of the examinations he was conducting, with the result that they misunderstood the nature of those examinations and why he was conducting them.
28. Dr. Le acknowledges that given the nature of the examinations he was conducting, clear explanations should have been given to the two complainants so that they could first provide informed consent prior to the examinations taking place.
29. Dr. Le acknowledges that he ought not to have proceeded with the examinations in question in the absence of informed consent.
30. Dr. Le acknowledges that it was inappropriate for him to assist patient A and patient B in disrobing.
31. Dr. Le acknowledges that no chaperone was in the room during any of the examinations. He acknowledges that it would have been preferable for him to have a chaperone present in the room for his examinations of patient A and patient B.

Admission

32. Dr. Le admits that his actions as set out above constitute acts or omissions relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Facts and Admission. Having regard to these facts, the Committee accepted the plea of no contest and found that Dr. Le committed an act of professional misconduct, 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

Dr. Le had an interpreter present throughout the hearing who translated the proceedings into Dr. Le's native language (Vietnamese).

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs.

College counsel made submissions regarding the mitigating factors in Dr. Le's case, and drew the Committee's attention to two previous cases to help guide the Committee in their decision.

Counsel for the College submitted that the following mitigating factors should be taken into consideration:

- (a) Dr. Le has no prior disciplinary findings with the College;
- (b) There was a Statement of Facts and Admission and joint submission on penalty;
- (c) By pleading no contest, Dr. Le spared the witnesses the emotional stress of giving evidence in a public hearing; and
- (d) By pleading no contest, Dr. Le spared the College a lengthy hearing at considerable cost.

College counsel submitted the following aggravating factors should also be considered:

- (a) Dr. Le did not consider the autonomy and personal dignity of the patients A and B;

(b) Dr. Le conducted an intimate exam which was embarrassing and awkward on the two sixteen-year-old females patients A and B; and

(c) Dr. Le did not permit the patients A and B to make an informed decision.

College counsel drew our attention to two previous decisions of the Discipline Committee as cases similar to this one. In the first case (*CPSO v. Dr. Li*), the facts indicated that Dr. Li had conducted a breast examination in an inappropriate manner. He failed to provide appropriate protection for the patient's privacy by repeatedly lifting her t-shirt and exposing her breasts. With another patient, he conducted a physical examination in an inappropriate manner by sliding his hand under the patient's pants to check for pubic hair growth. In addition, he conducted this examination without properly explaining in advance to the patient the nature and purpose of the examination. The penalty ordered included a reprimand to be recorded in the register, a three-month suspension of Dr. Li's certificate of registration, and a condition that Dr. Li attend a number of educational courses to address his deficiencies. Dr. Li was also ordered to submit to a practice inspection by a College inspector two years after the completion of the suspension.

The *Li* case is relevant and similar to Dr. Le's matter, in that the patients in both cases were not informed in advance of the nature and purpose of the physical examination and that the physician failed to obtain informed consent. In each case, there was a physical examination of intimate areas that was performed in an inappropriate manner which involved either lifting or pulling down the patients' clothes during the examination. In the *Li* case, there was no finding that the alleged acts occurred with any sexual intent and there was no finding of sexual abuse. In Dr. Le's case, there was also no finding of a sexual intent or sexual abuse.

In the second case (*CPSO v. Dr. Eisen*), the facts indicated that while conducting a physical examination of a female patient, Dr. Eisen placed his hand under the waistband of the patient's shorts. While the Committee did not find that there was any sexual element to the examination, the Committee concluded that the physical examination was performed very clumsily. They also found that Dr. Eisen failed to communicate with the patient and obtain her consent to conduct an examination which came into contact with a

very sensitive personal area. The penalty in the *Eisen* case included a reprimand to be recorded in the register, and a condition that Dr. Eisen attend a number of educational courses to address his deficiencies. Dr. Eisen was also ordered to have an assessment by the Quality Assurance Committee. In this case, there was no suspension of Dr. Eisen's certificate of registration.

The *Eisen* case is relevant and similar to Dr. Le's matter in that it involved a physical examination conducted in an inappropriate manner involving an intimate area without first explaining the procedure or obtaining informed consent.

College counsel submitted that the principles to be considered in determining the appropriate penalty were as follows: A penalty should serve to protect the public; provide specific and general deterrence; serve to rehabilitate the member; and maintain the public's confidence in the ability of the profession to regulate itself.

The penalty proposed would satisfy those principles as follows:

- (a) The reprimand expresses the College's disapproval of Dr. Le's behaviour and misconduct;
- (b) Completion of the College's Medical Ethics Course, Informed Consent Course, Understanding Boundaries and Preventing Boundary Violations in the Doctor-Patient Relationship Course, Communications Course as well as completing an educational program in the conduct of breast, pelvic and rectal examinations will remedy Dr. Le's deficiencies. This will also serve to rehabilitate Dr. Le and maintain the public's confidence in the ability of the profession to regulate itself;
- (c) The presence of a Practice Monitor at all intimate examinations of female patients such as breast, pelvic or rectal examinations will serve to protect the public;
- (d) The suspension will serve as a specific deterrent; and
- (e) Recording of the results of the proceeding on the register serves as a general deterrent to the profession at large and provides the public with notice of the misconduct.

This Committee considers the misconduct in this case to be a very serious matter. It is the duty of every physician to conduct an intimate examination in a respectful manner after

fully explaining the procedure and obtaining an informed consent. In order to maintain public trust, it is essential for every physician to respect the autonomy and personal dignity of their patients.

The doctor-patient relationship in this case involved two female patients who were both sixteen years old. Neither patient had previously undergone an intimate exam. Both patients felt violated and confused by the examination.

In both cases, it was the Committee's opinion that Dr. Le's conduct was a very serious breach of professional trust. Dr. Le had no regard to his professional duty to fully explain or obtain informed consent prior to performing a physical examination of an intimate area. In both cases, Dr. Le also failed to perform the physical examination involving an intimate area in a respectful and dignified manner.

The Committee was mindful that a joint submission should not be rejected, unless it is contrary to the public interest and would bring the administration of justice into disrepute. The Committee considered the submissions of College counsel and counsel for the member in support of the proposed joint submission on penalty. The Committee is satisfied that the joint submission on penalty properly fulfils the principles to be considered in determining penalty. While each case is unique, the penalty proposed does fall within the range of penalties imposed in previous cases.

ORDER

Therefore, the Committee ordered and directed that:

1. Dr. Le appear before the panel to receive a public reprimand.
2. The Registrar suspend Dr. Le's certificate of registration for a period of two (2) months, to commence May 9, 2010.
3. The Registrar impose the following terms, conditions and limitations on Dr. Le's certificate of registration:

- (a) Dr. Le shall successfully complete, at his own expense, the College's Medical Ethics and Informed Consent Course, the College's Understanding Boundaries and Preventing Boundary Violations in the Doctor-Patient Relationship Course and the College's Communications Course on the next available dates, and provide proof thereof to the College.
- (b) Dr. Le shall complete, at his own expense and within 6 months of the date of the Order, an educational program satisfactory to the College in the conduct of intimate examinations, such as breast, pelvic and rectal examinations, in which Dr. Le's conduct of such examinations is observed by the instructing physician and Dr. Le is provided with feedback.
- (c) Dr. Le shall not perform any intimate examinations of female patients, such as breast, pelvic or rectal examinations, unless in the presence of a female chaperone (the "Practice Monitor") in accordance with the following requirements:
 - (i) The Practice Monitor shall be a member of a registered health profession pursuant to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended, who is approved by the College and who has executed an undertaking with the College;
 - (ii) The Practice Monitor shall initial each patient chart for which they are present and there will be a second written record kept chronologically for each patient seen (the "Log"). The Log shall be kept by Dr. Le and initialed by the Practice Monitor who was present during the encounter. Dr. Le shall ensure that contemporaneously with any intimate exam of a female patient, the Practice Monitor initials the Log in addition to the patient chart;
 - (iii) Dr. Le shall place a sign in his waiting room and each of the examination rooms in his office stating that Dr. Le shall not conduct any intimate examination of female patients without the presence of another female

registered health professional throughout the examination. This signage shall be written in both English and Vietnamese.

(iv) Dr. Le shall provide his irrevocable consent to the College to make appropriate inquiries of the Ontario Health Insurance Plan in order for the College to monitor compliance with this term, condition and limitation; and

(v) Dr. Le shall bear any costs associated with this term, condition and limitation.

4. Dr. Le pay to the College costs in the amount of \$3,650, within 30 days of the date of the Order.
5. The results of this proceeding are to be included in the Register.