

**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. SOMCHAI JIARAVUTHISAN**

**PANEL MEMBERS:**

**DR. P. TADROS  
MS. D. GIAMPIETRI  
DR. W. MCCREADY  
MS. D. DOHERTY  
DR. P. CHART**

**COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF  
ONTARIO:**

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**MR. G. FORREST**

Hearing Date: November 7, 2016

Decision Date: November 7, 2016

Release of Written Reasons: December 16, 2016

## 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 November 7, 2016. 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. Jiaravuthisan committed an act of professional misconduct:

1. under clause 51(1)(b.1) of the Health Professions Procedural Code which is schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18 (the “Code”) in that he engaged in sexual abuse of a patient;
2. 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; and
3. under paragraph 1(1)2 of O. Reg. 856/93, in that he has failed to maintain the standard of practice of the profession.

### RESPONSE TO THE ALLEGATIONS

Dr. Jiaravuthisan admitted the second and third allegations in the Notice of Hearing, that he 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 and that he has failed to maintain the standard of practice of the profession. Counsel for the College withdrew the first allegation in the Notice of Hearing.

## **THE FACTS**

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

1. Dr. Somchai Jiaravuthisan (“Dr. Jiaravuthisan”) is a neurologist. He attended medical school at Mahidol University in Thailand, and has held a certificate of independent practice in Ontario since 1982. At all relevant times, he was practising in Oshawa, Ontario at the Glazier Medical Centre.

### **Patient A**

2. In April 2009, Patient A received a referral to Dr. Jiaravuthisan as a result of symptoms which included pain in her hand, hyperemia in both hands, and positive Tinel’s sign. The general practitioner who referred Patient A to Dr. Jiaravuthisan queried whether Patient A could have carpal tunnel syndrome or Raynaud’s syndrome, and believed that nerve conduction studies might be indicated. Patient A’s own understanding was that her referral related to carpal tunnel syndrome in her hands.
3. Patient A had a single office appointment with Dr. Jiaravuthisan in May 2009.
4. Dr. Jiaravuthisan took a history from Patient A. She experienced his questions as abrupt and his manner as directive. Dr. Jiaravuthisan commenced and documented an examination of Patient A, which included examining her gait, taking her vital signs, and examining her cardiovascular and respiratory systems. Dr. Jiaravuthisan’s examination of Patient A was medically indicated. However, he

failed to explain the steps of his examination or to seek Patient A's informed consent to the examination which he was conducting.

5. As part of his physical examination, Dr. Jiaravuthisan began to palpate Patient A's abdomen while she lay on an examination table. As he did so, he moved his hands below the waist band of her trousers to the suprapubic area below her navel, again without explanation or seeking informed consent. In doing so, Dr. Jiaravuthisan failed to show sensitivity and respect for Patient A's comfort, which was unprofessional.
6. Patient A was confused and upset by Dr. Jiaravuthisan's actions and did not know why he had moved his hands below the waist band of her trousers. She sat up and demanded to know what he was doing, then left the examination room and complained to his office staff about his behaviour.

### **Patient B**

7. Patient B was referred to see Dr. Jiaravuthisan by her family physician because of symptoms, including leg pain, weakness, and tingling, which developed about two weeks after having experienced the aftershock of a lightning strike.
8. Patient B had a single office appointment with Dr. Jiaravuthisan in October 2013. A friend attended with her and was in the examination room during the appointment.
9. Dr. Jiaravuthisan took a history from Patient B. Dr. Jiaravuthisan also conducted and documented an examination of Patient B, including a neurological examination, motor system examination, and physical examination. Dr. Jiaravuthisan's examination of Patient B was medically indicated. However, Dr. Jiaravuthisan failed to explain the steps of his examination or to seek Patient B's informed consent to the examination which he was conducting.
10. Dr. Jiaravuthisan failed to offer Patient B appropriate draping or a gown, or to wear a glove or gloves while examining her. He also displaced her clothing

- himself, by putting his hand under her pants, by rolling up one of her pant legs himself, and by pulling her shirt.
11. While conducting his examination of Patient B, Dr. Jiaravuthisan did not take sufficient care to maintain spatial boundaries. While he was palpating Patient B's abdomen with one hand, without warning he placed his other hand below her underpants on her mons pubis (external genital area) for approximately thirty seconds. Dr. Jiaravuthisan advises that any such contact would have been inadvertent, as he intended only to palpate Patient B's suprapubic area. He then directed her to roll over to examine her tailbone area where she said that she had been experiencing pain. Dr. Jiaravuthisan palpated Patient B's tailbone area underneath her clothing. In the course of doing so, he touched Patient B's buttocks in what felt to her like a squeezing motion. In examining Patient B's face, Dr. Jiaravuthisan also touched her face in a manner that felt to her like grabbing.
  12. Because Dr. Jiaravuthisan did not show sensitivity and respect for Patient B's comfort by maintaining spatial boundaries, communicating appropriately regarding the examination, and offering draping, the appointment was very distressing to Patient B. His conduct in this regard was unprofessional. Afterwards, she told office staff in tears that she did not like how Dr. Jiaravuthisan had touched her and did not want to return, and she expressed her concerns to her family physician.

### **Admission**

13. Dr. Jiaravuthisan admits the facts set out above, and admits that (a) he thereby failed to maintain the standard of practice of the profession, and that (b) the conduct described would reasonably be regarded by members of the profession 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 accepted Dr. Jiaravuthisan's admission and found that he committed an act of professional misconduct in that he 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 and that he has failed to maintain the standard of practice of the profession.

## **PENALTY AND REASONS FOR PENALTY**

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

1. Dr. Somchai Jiaravuthisan ("Dr. Jiaravuthisan") entered into an undertaking to the College on October 19, 2016, by which he has agreed to resign his certificate of registration effective November 7, 2016. The undertaking is attached at Tab 1 of the Agreed Statement of Facts Regarding Penalty.

Counsel for the College and counsel for the member made a joint submission as to an appropriate penalty and costs order. The proposed order included a reprimand and costs of \$5,000.00 to be paid to the College within thirty days.

### **Penalty and Reasons for Penalty**

In considering whether the proposed penalty represented appropriate sanction, the Committee was acutely aware that the order should address and be proportional to the misconduct.

Protection of the public is the primary consideration. Also important are the general penalty principles, which are well-accepted. In this matter, denunciation of the conduct, general deterrence, maintaining public confidence in the profession, and demonstrating the profession's ability to govern itself in the public interest were particularly important.

The Committee was also aware of the direction of the courts that a joint submission should be accepted by the Committee unless the proposed penalty is so disproportionate to the misconduct that to accept it would bring the administration of justice into disrepute or otherwise be contrary to the public interest.

## **Analysis**

### *Nature and Extent of the Professional Misconduct*

The nature and extent of Dr. Jiaravuthisan's professional misconduct is set out in detail in the Agreed Statement of Facts. The Committee makes the following comments in respect of his misconduct to emphasize the importance of appropriate and respectful behaviour.

As a specialist in neurology and a seasoned, mature physician, the public and this Committee expect Dr. Jiaravuthisan to treat patients appropriately. The Committee takes no issue with the fact that Dr. Jiaravuthisan concluded there was a need for complete physical examinations for these patients. Indeed when a specialist referral is made, it is self-evident that the specialist will conduct his or her own observation and consultation, and that complete differential diagnosis and appropriate management is needed.

What is important is for patients to be appropriately informed as to the nature and extent of the consultation. In this respect, Dr. Jiaravuthisan fell woefully short. Dr. Jiaravuthisan performed the examinations without any explanation. It is no wonder that patients were upset, and, in one case, left in tears.

Physicians must ensure that their patients understand what steps are required to make a diagnosis and to answer their questions. A direct and abrupt manner does not engender the kind of desirable communication which the public fairly expects. Quite the opposite.

Physicians do not act alone but rather must see their role as a participant in the physician-patient relationship. Gone are the days of “doctor knows best.” The partnership between a patient and his or her physician is one of mutual respect. Dr. Jiaravuthisan had many opportunities in the course of his consultations to explain to his patients how and why he was going to proceed, yet he failed to do so.

It was Dr. Jiarvuthisan’s clear responsibility to convey to his patients what he needed to do. Had he done so, his patients would have been prepared and would have likely consented. The immediate response of leaving the examination room, complaints to staff and the emotional upset (including tears) after the consultation speak to the degree of offense taken by these patients. This neglect of appropriate behaviour rests entirely upon Dr. Jiaravuthisan. His lack of communication with the two complainants in this matter demonstrated a failure to maintain the standard of practice expected of the profession.

There were a number of specific examples where Dr. Jiaravuthisan demonstrated a lack of sensitivity and respect for his patients. The following examples illustrate this point:

- In examining Patient A, who had presented with complaints suggesting carpal tunnel syndrome, Dr. Jiarvuthisan’s hands moved during physical examination to her suprapubic area without explanation or consent;
- In examining Patient B, Dr. Jiaravuthisan failed to offer her appropriate draping and moved or displaced her clothing himself;
- In examining Patient B, who had a number of complaints related to an aftershock of a lightning strike, Dr. Jiaravuthisan’s hands touched the area of the mons pubis and buttocks without explanation or consent (the Committee accepts that touching the mons pubis was inadvertent, as there is no clear demarcation between the suprapubic area of the abdomen and the mons pubis); and
- In touching Patient B’s face, tailbone, and buttocks the way he did, without her understanding why he was doing so, Dr. Jiaravuthisan set the stage for misapprehension of his motives and sexual innuendo.

Dr. Jiaravuthisan's perfunctory manner was amply demonstrated in the agreed facts. This involved being abrupt and direct in communicating with his patients, failing to ensure patient understanding and consent, and neglecting the need for appropriate draping. The public expects more from the profession, given the trust the public invests in physicians.

The Committee appreciates that public expectation has changed over time; nonetheless, it remains the responsibility of the individual physician to keep up to date not only with technical training but with evolving social norms as well. Sensitivity and respect for patients are deep-rooted principles of the practice of medicine.

The Committee was of the view that Dr. Jiaravuthisan, by his actions, demonstrated a clear lack of awareness of his patient's right to dignity and privacy. This disrespect clearly constitutes unprofessional conduct.

#### *Mitigating Factors*

The Committee accepted that Dr. Jiaravuthisan has practised for 34 years and this is the first time he has appeared before the Discipline Committee. As well, in cooperating with counsel for the College in submitting an agreed statement of facts and a joint submission on penalty, Dr. Jiaravuthisan has spared these patients from having to come forward and testify. The Committee also accepted that in resigning his certificate of registration, Dr. Jiaravuthisan has accepted responsibility for his actions.

#### *Aggravating Factors*

The Committee was concerned that the behaviour which spurred the complaints of both patients was similar in nature, which suggests repetitive behaviour and a more pervasive problem in respect to Dr. Jiaravuthisan's patient care.

### *Penalty Principles*

In resigning his certificate of registration and agreeing never to reapply, the Committee was satisfied that the public will be protected. The seriousness of findings where disrespect and lack of sensitivity are evident are reflected in his resignation. The Committee was also of the view that this should be an effective general deterrent.

The reprimand is intended to convey the Committee's view of his misconduct directly to Dr. Jiaravuthisan. This allowed specific denunciation of misconduct which, in the Committee's view, was disrespectful and insensitive to patients. General deterrence and maintaining the reputation of the profession are also addressed by the reprimand.

### *Case Law*

In *CPSO v. Chung* (2014), the Committee was faced with more serious and pervasive misconduct. A major theme in *Chung*, however, was a lack of sensitivity and respect for patients' dignity and privacy. This is similar to the deficits found with Dr. Jiaravuthisan. Dr. Chung resigned his certificate of registration and signed an undertaking never to reapply. Costs and a reprimand were ordered.

In *CPSO v. Dubins* (2016), the Committee found that Dr. Dubins failed to maintain the standard of practice and engaged in disgraceful, dishonourable, or unprofessional conduct. The same findings were made in Dr. Jiaravuthisan's matter. It should be noted that the misconduct in *Dubins* was more serious and offensive. Disposition in *Dubins* included an undertaking to resign and not to reapply, a reprimand, and costs.

In *CPSO v. Guindon* (2012), *CPSO v. Laing* (2013) and *CPSO v. Dr. Sim* (2015), the misconduct was more serious than Dr. Jiaravuthisan's. The respective penalties, intended to provide for protection of the public, were the same as proposed in the current matter.

The above case law illustrates that there is a spectrum of misconduct that may require the removal of a physician from practice in order to ensure protection of the public. While Dr. Jiaravuthisan's behaviour was unique and less egregious than the cases cited above,

his resignation and agreement never to reapply satisfies the need for protection of the public.

In conclusion, the Committee is satisfied that the penalty proposed by the parties represents appropriate sanction in this matter.

**ORDER**

The Committee stated its findings in paragraphs 1 and 2 of its written order of November 7, 2016. In that order, the Committee ordered and directed on the matter of penalty and costs that:

3. Dr. Jiaravuthisan to appear before the panel to be reprimanded.
4. Dr. Jiaravuthisan pay to the College its costs of this proceeding in the amount of \$5,000.00 within thirty (30) days from the date of this Order.

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

**TEXT of PUBLIC REPRIMAND**  
**Delivered November 7, 2016**  
**in the case of the**  
**COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO**  
**AND**  
**DR. SOMCHAI JIARAVUTHISAN**

The Chairperson: The practice of medicine is one which requires public trust. You have breached this trust by objectionable repetitive misconduct.

Your resignation, admission and no previous discipline history are mitigating factors. This ensures both the protection of the public trust and spares the potential witnesses stress of testifying.

The Panel wishes to convey our abhorrence of your unacceptable behaviour and our distress that your long career would end in this way.

*This is not an official transcript*