

Indexed as: Im (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*
of the *Regulated Health Professions Act*, 1991,
S.O.1991, c.18, as amended.

BETWEEN:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

- and -

DR. CHARLES CHUL SOO IM

PANEL MEMBERS:

DR. A. KENSHOLE (CHAIR)
DR. Y. deBUDA
DR. J. DOHERTY
P. BEECHAM
J. MARTEL

HEARING DATE:

August 21 – 25, 2000

DECISION DATE:

July 12, 2001

DECISION AND REASONS FOR DECISION

This matter was heard by the Discipline Committee of the College of Physicians and Surgeons of Ontario at Toronto, from August 21, through to August 25, 2000.

THE ALLEGATIONS

It was alleged that Dr. Charles Chul Soo Im has 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* (the “Code”), in that he sexually abused patients; and
2. under subsection 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991*, in that he committed an act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional;

It was further alleged under subsection 52(1) of the *Health Professions Procedural Code*, that Dr. Im was incompetent in his care of a patient, in that he displayed a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature, or to an extent that demonstrates that he is unfit to continue practice or that his practice should be restricted.

PLEA

Dr. Im pleaded not guilty to each allegation.

ISSUES

This case involved the evidence of 2 patients of Dr. Im, and their perception and interpretation of events during their treatments by Dr. Im. The College position was that the Dr. Im’s touching of these patients during an ocular-visual assessment was intentional and of a sexual nature. The defence position was that the touching may have occurred, but it was accidental in the course of treatment, and not of a sexual nature.

THE EVIDENCE

The first complainant is now 32. On August 16, 1999 she had her first consultation with Dr. Im for an ocular-visual assessment, it being two years since her contact lenses had been renewed. It was the events that occurred during this fifteen-minute interaction that led to her writing a letter of complaint to the College, which in turn led to the current proceedings. Complainant 1 testified that Dr. Im took a brief history including ascertaining that she was using oral contraceptives which he would testify later was relevant to her admission that her eyes were dry. Some conversation occurred relating to the eye doctor that Complainant 1 had previously seen and the speed with which he might have performed his examination. Complainant 1 then testified as to the order in which the various components of the examination were carried out. Dr. Im first tested her distance vision and then her near vision. She questioned him as to why the latter was necessary, as she thought that this was “only necessary for old people”. She testified that Dr. Im patted her thigh twice, and said “You don’t need to worry about that - look how attractive you are”. At the time complainant 1 was wearing a short skirt and nylons. Dr. Im placed two pieces of chewing gum in his mouth and then dimmed one of the lights in the room in preparation for ophthalmoscopic examination. During this procedure complainant 1 testified that he stood directly in front of her, pushed against her knees and moved back and forth from one knee to the other as he was examining her eyes. She testified that she felt his penis, which she said was flaccid. She heard him say, “I’m sorry my friend is touching you”. She thought she must have misheard.

He continued to push against her knees and repeated the same phrase. At this time she had no doubt that those were his words. He then pushed her legs over to one side. She describes herself as tense, afraid, confused and sweating at this time. Dr. Im then explained the need for performing a test for glaucoma. She testified that he again stood directly in front of her with his penis pushing against her knees. She was sitting forward in the examining chair. He again moved back and forth, his penis coming into contact with each knee in turn. On this occasion complainant 1 states that Dr. Im’s penis was erect. Dr. Im again reiterated, “I’m sorry, my friend is touching you”, and on returning to his desk he said, “I’m sorry my friend was touching you but I need to get in close to do the examination”. Having received a prescription for new contact lenses, complainant 1 left Dr. Im’s office, which was located within a optical store. She went to the customer service representative and was given a trial pair of contact lenses, which she was to return the following day.

Complainant 1 describes herself as being shocked, embarrassed and afraid when she returned to work after the appointment. She spoke with a male partner and the receptionist at her place of work. At some point she spoke with a counsellor at the sexual assault centre at Womens' College Hospital, a victim advice counsellor of the Metropolitan Police and laid a charge at 52 Division, Police Headquarters. From her description of the events, complainant 1 was advised by the sexual assault counsellor that she had been the subject of sexual abuse. Complainant 1 contacted the College of Optometrists but on learning that Dr. Im was a physician, not an optometrist, she accessed the CPSO website on which she saw that Dr. Im had a record for a previous discipline proceeding. In early September 1999 she sent a letter of complaint to the College.

Under cross-examination complainant 1 agreed that Dr. Im exhibited no signs of sexual arousal. While commenting that she felt that his gum chewing was unprofessional she disagreed with the contention that what Dr. Im had said as he claimed "I'm sorry, my front is touching you". Complainant 1 did not accept that Dr. Im's saying "I am sorry" constituted an apology that contact between his and her body had occurred.

In the letter to the College received September 14, 1999, complainant 1 made no mention of the state of Dr. Im's penis at any time during the examination. It was when complainant 1 met with a College investigator, on October 22, 1999 that she stated that Dr. Im's penis was erect during the glaucoma testing, at the completion of the visit.

After sending her letter of complaint to the College with a copy to the owner of the optical store, complainant 1 testified that she instructed the receptionist at her workplace not to put any telephone call from Dr. Im through to her. She testified that on two occasions Dr. Im did phone but left no message on her voice mail. These facts were corroborated by the receptionist, Ms. K., calls being received on September 21, and 22.

Under cross-examination, complainant 1's explanation as to why she had not commented on penile status in the letter to the College but did at her meeting with the College investigator was due to embarrassment.

The panel found complainant 1 to be a credible witness.

The second complainant had attended Dr. Im for her first ocular-visual assessment on the same day, August 16, 1999. On receiving complainant 1's complaint, the College had seized Dr. Im's list of

appointments for that day and had contacted each of the female patients listed. When asked by a College representative whether she recollected anything unusual about her appointment with Dr. Im, complainant 2 responded that she knew why the College was contacting her. She stated that towards the end of the examination she was aware of Dr. Im's penis touching or brushing her left knee for approximately two seconds. Although complainant 2 does not recall Dr. Im performing an examination with an ophthalmoscope or tonometry, both of these exams are recorded on his office record. As with complainant 1, Dr. Im would testify that to visualize the optic fundus with the ophthalmoscope it is necessary to get very close to the patient so that he may have to rest his hand on the patient's cheek. Similarly, when performing tonometry with a hand-held tonometer, he has to lean in close to the patient, having approached the patient at a 45-degree angle from the right and left side alternately. Each of these examinations requires examining each eye in turn on more than one occasion, thus his need to move back and forth in front of the patient. Both complainant 1 and complainant 2 are tall, whereas Dr. Im is 5'4". In the letter that complainant 2 wrote to the College in January 8, 2000, complainant 2 stated that when she sat in the examining chair "her long legs stuck out and she did not know whether Dr. Im was aware that his penis had come into contact with her knee." She stated that, "at that time she was not sure if the contact was accidental or not but on reflection since that time she has become more angry and more certain in her own mind that it was intentional."

Though the description complainant 2 gave of the course of events during her interaction with Dr. Im appeared somewhat confused and incomplete, the panel found her overall to be a credible witness.

Dr. Im's Testimony

Dr. Im is a 39 year-old married physician who was born in Korea, came to Canada at the age of 18 and obtained his M.D. in 1986. Since 1991 his practice has been limited to ocular-visual assessment. He has been at the same location since 1991. Dr. Im described and demonstrated the components of each examination that he routinely performs. A photograph of the examining chair in which the complainants were seated was provided to the panel. The elevation of the chair can be adjusted but it does not swivel. Dr. Im demonstrated the various positions that he has to place himself with respect to the patient as he performs different parts of the examination, for example when changing lenses in both eyes in turn using the fluoropter he has to stand directly in front of the patient, whereas ophthalmoscopy and tonometry would be performed at alternating 45 degree angles. He estimated the duration of an ophthalmoscopic examination to be 1-2 minutes and a similar length of time for tonometry. He stated that his short stature necessitated his leaning forward towards patients. He did not deny that his groin area could have come into contact with the complainants knees, as they described, but categorically denied intentional touching

or pressing or sexual arousal.

With respect to the comments made to complainant 1, Dr. Im stated that the phrase that he had used was “I’m sorry, my front is touching you”. He explained that this is the phrase he does use on occasion when he is having difficulty, as he recalls in complainant 1’s case in positioning himself in relation to the patient so that he can carry out a proper examination. He added that he uses this phrase as a way of suggesting to the patient that they should alter their position. It is not his custom to ask the patient directly to change position. In accepting Dr. Im’s explanation concerning the use of “friend” vs. “front”, the panel noted that Dr. Im’s first language was not English. Although, the panel had no difficulty distinguishing between the words “friend” and “front” during Dr. Im’s testimony, at a time he was not chewing gum, it was quite difficult to understand what he was saying on occasion. For example he was thought to have said “a cobalt light” on one occasion and “a cold blue light” on another.

When questioned as to why he had attempted to telephone complainant 1, especially in the light of his previous conviction on a sexual matter, Dr. Im conceded that this was unwise on his part. He stated that he was bewildered by the statements contained in the copy of complainant 1’s letter to the College that he received in September, 1999 so that he obtained her number from his office charts and attempted to speak with her to obtain some clarification. He chose not to leave a message on her voice mail concerning this. From her letter he was aware that she had already contacted several individuals and agencies, including the police. He denied that, in attempting to speak with her, it was his intention to persuade her to drop her allegations against him.

Decision on Motions made to the Committee

A motion was made by the defence to prevent cross-examination of Dr. Im on a prior conviction for sexual assault and the resulting discipline proceeding at the College. The motion was brought under the principles in the case *R v. Corbett* in the Supreme Court of Canada, on the ground that the prejudicial effect of such examination would outweigh its probative value. The panel was provided with transcripts from Dr. Im’s 1992 criminal case involving Dr. Im and a summary of the testimony of the five female victims. Having reviewed these, and the authorities relied upon by legal counsel for the parties, the Committee decided that the *Corbett* application by the defence should be denied. The panel accepted that they have the discretion to prohibit questions to Dr. Im as to whether he had a prior record of conviction. However the panel exercised their discretion in favour of allowing such questions because of their relevance to the issue of Dr. Im’s credibility.

The Committee favoured an inclusionary approach to all information that is relevant. At the same time the Committee recognized the proper limit that could be made of such evidence, on which they had been advised. The fact of prior conviction before the criminal courts or the Discipline Committee could not be used to suggest that Dr. Im has a “propensity to do bad things”. It would be used for the purpose of assisting the Committee in assessing the credibility of Dr. Im as a witness.

A second motion, this one brought by counsel for the College, sought to persuade the Committee to admit similar fact evidence relating to the prior conviction. After a careful review of the documents relating to the previous case and discipline hearing, and after hearing the submissions of counsel and as to the law governing similar fact evidence and when it should be received, the Committee concluded that the facts from the previous case were dissimilar rather than similar, and that the prejudicial effect of including evidence from the previous case would exceed its probative value. Accordingly, the motion to allow similar fact evidence was dismissed.

FINDINGS

Although the witnesses were credible, the Committee concluded that the evidence did not prove to the required standard of proof in the *Bernstein* case, that Dr. Im had intentionally touched his patients in a sexual manner. This was in the Committee’s view a case of perception and misinterpretation. Accordingly, the Discipline Committee finds Dr. Im not guilty of sexual abuse as alleged in the Notice of Hearing. Furthermore, the Committee does not find Dr. Im to be incompetent as defined by subsection 52(1) of the *Health Profession Procedural Code*.

However, The Discipline Committee does find Dr. Im to be guilty of unprofessional conduct under subsection 1(1) 33 of *Ontario Regulation 856/93*, and is thereby guilty of professional misconduct. The Committee finds that he has not adequately maintained appropriate professional boundaries, specifically in the physical/spatial area. He has failed to communicate verbally, clearly and cogently with patients, in that he did not indicate that they should position themselves in such a way to facilitate the physical examination and avoid unnecessary touching. Dr. Im’s actions contributed to the misinterpretation of events by his patients.

The Committee directs the Hearing Office to schedule a penalty hearing with regard to the finding of

professional misconduct that it has made.