

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Charles Chul Soo Im, this is notice that the Discipline Committee ordered that there shall be a ban on the publication of the name or identity and any information that would disclose the name or identity of the patients whose names or identities are disclosed at the hearing or in any other documents filed at the hearing, 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,

- (a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or
- (b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence.

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 Executive Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 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. CHARLES CHUL SOO IM

PANEL MEMBERS:

**DR. J. WATTS (CHAIR)
S. BERI
DR. M. DAVIE
S. DAVIS
DR. M. GABEL**

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| Hearing Date: | October 22, 2009 |
| Decision Release Date: | October 22, 2009 |
| Release of Written Reasons: | November 24, 2009 |

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 October 22, 2009. 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. Im committed acts 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 conduct or an act or acts 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
2. under clause 51(1)(a) 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 has been found guilty of an offence that is relevant to his suitability to practise.

RESPONSE TO THE ALLEGATIONS

Dr. Im admitted the second allegation in the Notice of Hearing, that he has been found guilty of an offence that is relevant to his suitability to practise. Counsel for the College withdrew the first allegation in the Notice of Hearing.

FACTS AND EVIDENCE

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

1. Dr. Charles Chul Soo Im (“Dr. Im”) is 48 years old. He received his independent practice certificate in 1987.
2. Since 1993, Dr. Im’s practice of medicine has been limited to the provision of refractive optometric examination.
3. Dr. Im was criminally charged with two counts of sexual assault, with respect to two separate complainants, Patient A and Patient B. Dr. Im was accused of rubbing his groin against the complainants during eye examinations in July of 2004.
4. On December 13, 2005, the Honourable Justice L. Marshall of the Ontario Court of Justice delivered her reasons for judgment (Tab 1) [to the Agreed Statement of Facts]. Dr. Im was found guilty of sexual assault against Patient A. The charge with respect to Patient B was dismissed.
5. On March 6, 2006 Justice L. Marshall delivered her reasons for sentencing (Tab 2) [to the Agreed Statement of Facts]. Dr. Im received a 6 month conditional sentence followed by 3 years probation.

FINDING

The Committee accepted as true all of the facts set out in the Agreed Statement of Facts. The Committee reviewed in detail, as well, the reasons for judgment of the Honourable Justice L. Marshall of the Ontario Court of Justice as set out in Tab 1 of the Agreed Statement of Facts, and her reasons for sentencing, as set out in Tab 2 of the Agreed Statement of Facts. Having regard to these facts, the Committee accepted Dr. Im’s admission and found that he committed an act of professional misconduct in that he has been found guilty of an offence that is relevant to his suitability to practise.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and counsel for the member made a joint submission as to penalty and costs, which they submitted was appropriate to the circumstances of the case.

The joint submission was that:

- (a) Dr. Im's certificate of registration be revoked, such revocation to take effect immediately;
- (b) Dr. Im will appear before the panel to be reprimanded;
- (c) Dr. Im will pay to the College costs in the amount of \$3,650.00 within one year of the date of the Order; and
- (d) The results of the proceeding will be included in the Register.

The Committee is aware that a joint submission as to penalty must be accepted, unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

The Committee reviewed the proposed penalty and considered whether it appropriately met the goals of protection of the public; maintaining public confidence in the medical profession and its ability to self-govern; general and specific deterrence; condemnation of the member's behaviour; and, where possible, rehabilitation of the member. The Committee also took into account the following aggravating and mitigating factors.

Aggravating factors:

The Committee noted that this was not the first finding by this Committee against Dr. Im. In 1993, after Dr. Im pleaded (and was found) guilty in the criminal courts on five charges of sexual assault, the Committee made a finding against him of unprofessional conduct, in that he was found guilty of a criminal offence relevant to his suitability to practise medicine. In 2001, Dr. Im was found not guilty of sexual abuse, but he was found to have committed professional misconduct in failing to maintain appropriate professional boundaries, especially in the physical/spatial area, during ocular-visual examinations of two female patients. In both of these previous instances before this

Committee, Dr. Im was allowed to continue in what was intended to be a restricted form of practice, which along with psychotherapy and supervision or monitoring, was intended to protect the public. Sadly, Dr. Im again comes before the Committee having engaged in inappropriate conduct of a sexual nature with patients, for which he was criminally convicted and sentenced.

Dr. Im, while accepting the allegation of professional misconduct based on this conviction, still denies the crime for which he was convicted in the courts. In finding Dr. Im guilty of sexual assault, Justice Marshall stated “I accept that his conduct in having contact with [the complainant] was not incidental or accidental, and I accept her evidence that it was deliberate and it amounted to a sexual assault....” In light of Dr. Im’s previous appearances before this Committee, this lack of insight into his actions causes serious concern.

Mitigating factors:

Dr. Im’s admission of the allegation against him, which meant that the College did not have to call evidence relating to his conviction, is a mitigating factor.

Dr. Im’s counsel further submitted that it was a mitigating factor that the sexual assault of which he was convicted, while serious, was not the most serious of sexual offences. The Committee does not agree. In a situation where a member has engaged in multiple offences over time, and is without insight, the differential between levels of conduct becomes moot. The unexpected intrusion of sexually inappropriate actions and words into the doctor-patient relationship is traumatic and demeaning to the patient. The loss of trust caused by this type of behaviour affects not only the patient, but can lead to distrust of the entire profession. This is serious misconduct; the medical profession cannot tolerate such behaviour by its members.

The Committee would quote Justice Marshall once again:

I do not know exactly what his problem is, whether it is conscious or subconscious, but it is very clear that this man is a risk to any female patient of whom he has unsupervised contact. And whatever happens in the future and whatever decisions the College might make about his ability to practice

medicine, I would hope and trust, for the sake of members of the public, of which I am one, that he is never allowed unsupervised contact with female patients, period. **How many of them have to be sacrificed on the altar of his personal problems?** [emphasis added]

Conclusion:

Taking all of these factors into account, the Committee was satisfied that the proposed penalty will meet the principles noted above.

The Committee also concluded that, pursuant to s. 53.1 of the Code, this is an appropriate case for the imposition of costs, as proposed in the joint submission.

ORDER

Therefore, the Committee ordered and directed that:

1. The Registrar revoke Dr. Im's certificate of registration, effective immediately.
2. Dr. Im appear before the panel to be reprimanded.
3. Dr. Im pay to the College costs in the amount of \$3,650 within one year of the date of the Order.
4. The results of this proceeding be included in the register.

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