

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Chee Choon Lee, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the name of Patient B, or any information that could identify Patient B referred to orally or in the exhibits filed at the hearing and of the names or any information that could disclose the identity of other patients of Dr. Lee who testify 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.

Further, the Discipline Committee ordered a ban on the publication of the name and any information that could disclose the identity of Patient A whose testimony is in relation to allegations of misconduct of a sexual nature involving Patient A, under subsection 47(1) 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, 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: Ontario (College of Physicians and Surgeons of Ontario) v. Lee,
2017 ONCPSD 53**

**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. CHEE CHOON LEE

PANEL MEMBERS:

**DR. W. KING (CHAIR)
MR. P. GIROUX
DR. D. HELLYER
MR. A. RONALD
DR. P. CHART**

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

MS A. CRANKER

COUNSEL FOR DR. LEE:

MR. J. LILLES

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MR. R. COSMAN

Hearing Dates: September 19 to 21, 2017
Finding Decision Date: December 14, 2017
Release of Written Reasons: December 14, 2017

PUBLICATION BAN

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 September 19 to 21, 2017. At the conclusion of the hearing, the Committee reserved its decision on finding.

ALLEGATIONS

The Notice of Hearing alleged that Dr. Chee Choon Lee 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 has engaged in the sexual abuse of a patient; and
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 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 ALLEGATIONS

Dr. Lee denied the allegations in the Notice of Hearing.

BACKGROUND

Dr. Lee is a 69 year old family physician who practises in Scarborough, Ontario. Patient A is a Mandarin speaking woman in her 50s. She was a patient of Dr. Lee from approximately 2000 until July 2014. Dr. Lee and Patient A communicated in Mandarin. The allegation of sexual abuse followed a mandatory report, dated November 7, 2014, from a rheumatologist who saw Patient A. Patient A asked her rheumatologist to refer her to a new family doctor as she no longer wanted to see Dr. Lee, because she said Dr. Lee

had kissed her on the lips at her last visit with him. Later, when speaking to a College investigator, Patient A alleged that Dr. Lee had also touched her shoulders and legs in a sexual manner and made comments of a sexual nature.

On January 30, 2017, the Inquiries Complaints Reports Committee issued an order (“the ICRC Order”) requiring Dr. Lee to have a female monitor, who is a regulated health professional, present for all professional encounters with female patients. Dr. Lee did not arrange for a monitor; he modified his practice to see only male patients. In May 2017, Dr. Lee saw Patient B when she attended with her husband and administered an injection of Prolia for osteoporosis. Dr. Lee does not dispute that he gave Patient B an injection, but he disputes that in the circumstances, this act constitutes disgraceful, dishonourable or unprofessional conduct.

THE ISSUES

1. Did Dr. Lee kiss Patient A on the lips, while holding her down in the chair, or otherwise touch or come close to her face during an office visit in July, 2014? If so, does this constitute sexual abuse and /or disgraceful, dishonourable or unprofessional conduct?
2. Did Dr. Lee touch Patient A’s shoulders and legs in a sexual manner during office visits between 2009 and 2014? If so, does this constitute sexual abuse and/or disgraceful, dishonourable or unprofessional conduct?
3. Did Dr. Lee make comments of a sexual nature to Patient A during office visits between 2009 and 2014? If so, does this constitute sexual abuse and/or disgraceful, dishononourable or unprofessional conduct?
4. Did Dr. Lee breach the ICRC Order of January 30, 2017 by administering an injection to a female patient without the presence of a female monitor who is a

regulated health professional? If so, does this constitute professional misconduct as alleged?

THE EVIDENCE

Summary of the Evidence

The Committee admitted a number of documents in evidence, including: a Joint Book of Documents (containing medical records of Patient A and Patient B), a Book of Documents for the examination of Dr. Lee and various office related items (day sheets, appointment records, OHIP statements, office floor plans and photographs), a *curriculum vitae* of Dr. Lee, emails, letters, family court records (in part), the ICRC Order dated January 30, 2017 pertaining to Dr. Lee, the College Policy on Maintaining Boundaries and a certificate and evaluation from the Boundaries Course that Dr. Lee attended on his own initiative following Patient A's allegations.

Witnesses

The Committee heard the testimony of six witnesses, including Patient A and Dr. Lee.

Testimony of Patient A and Dr. Lee

Patient A testified she was born in China and moved to Canada. She was divorced and has an adult child.

Dr. Lee testified he was born in Malaysia, earned his medical degree in Taipei and became certified to practise medicine in Ontario in 1993. Dr. Lee is 69 years old and currently practises family medicine at the Scarborough Medical Centre. At least half of his patients are from China.

Patient A testified she became a patient of Dr. Lee between 1999 and 2000.

Dr. Lee testified that from 1999 to 2007, he was a family doctor for the Corporate Medical Clinic. Subsequently, Dr. Lee practised at the Scarborough Medical Centre. Both Patient A and Dr. Lee agree that he saw her at both sites.

Patient A testified she saw Dr. Lee for treatment of rheumatoid arthritis and depression.

Dr. Lee testified that in June 2002, he diagnosed Patient A with rheumatoid arthritis (RA). Her RA progressed from 2003 to 2006. He referred her to a number of rheumatologists. Dr. Lee testified that Patient A became very depressed; her husband blamed her for not working and her medication was costly. Dr. Lee testified that later, Patient A had separated from her husband and was having financial difficulties. Patient A does not dispute these facts.

Office Visit of July, 2014

Patient A testified that she attended Dr. Lee in July, 2014 as she was experiencing pain in her right hip. She had had a surgery of the right hip. She was not able to walk and used a roller walker for assistance.

Dr. Lee testified that he had a vivid recollection of her visit that day. She used a roller walker. He recalled she was complaining of right thigh pain laterally and insomnia. Dr. Lee testified that he examined Patient A on the right side and lumbar area while she was standing up and clothed. He diagnosed her pain as musculoskeletal, sciatica or related to her prior hip surgery. Dr. Lee testified that Patient A did not complain of symptoms related to her rheumatoid arthritis.

Patient A asserted that no examination of her right hip was done.

Patient A testified that after telling him about her illness, Dr. Lee prescribed some medication.

Dr. Lee testified he sat at the desk and she was sitting in the chair beside the desk. He said he wrote a prescription for Remeron for her insomnia. He asked for her consent to get records from the hospital.

At first, Patient A testified that she could not clearly recall signing a consent form for Dr. Lee to obtain records from the hospital, but later she remembered that she signed that form.

Patient A testified that Dr. Lee then came close to her, put his hands on her shoulders and kissed her on the lips. She said she tried to push him away, but her hands were weak from her rheumatoid arthritis. Patient A testified that she struggled, shouted “no” and shook her head. In doing so, she said she left a lipstick mark on his cheek.

Dr. Lee testified that he held the prescription in one hand and the chart in the other. Dr. Lee testified that he bent his head forward beside Patient A’s head, intending to give a cheek-to-cheek contact as a gesture of support. Dr. Lee testified that she immediately turned sideways and her lips touched his cheek, leaving a lipstick mark. Dr. Lee testified he never kissed her.

Patient A testified she was very angry and took out her cell phone and took a picture of Dr. Lee, which he blocked with his hand. Patient A said that she was taking a picture of her lipstick on Dr. Lee’s cheek. Patient A testified that Dr. Lee said “sorry, sorry” and then left the room. Dr. Lee testified that Patient A was upset when the appointment ended; he said, “she scolded me and tried to take a picture.” Dr. Lee testified that he apologized to her and spent some time trying to explain the innocence of his action. She did not seem to accept this explanation.

Dr. Lee testified that he did not believe there would be any serious consequences. Dr. Lee testified that there was nothing sexual intended and he meant his action to be “a supportive compliment.” Dr. Lee testified that he had never done this before. He testified that the cheek-to-cheek contact was a spur of the moment. He further testified he felt

there was reason enough to congratulate her. Dr. Lee testified that Patient A was a long time patient and doing well in regard to her RA. Dr. Lee expressed that he was sorry he infringed on Patient A and that now he understands that this was a boundary transgression. Dr. Lee testified he made no note on the chart of this episode, thinking that it was “no big deal.”

Patient A testified that in November 2014, when she attended Dr. Leung, her rheumatologist, she asked for a new family doctor who could speak Mandarin.

Dr. Lee testified that when he received a call from a College investigator, Ms Carroll, he described what happened as “a kiss on the cheek as a relative would do, as a greeting.” Later, he referred to it as “a peck on the cheek.” Before the hearing, he called the College and indicated that what he meant was “cheek-to-cheek contact.”

Office Visits between 2009 and 2014

Patient A testified that Dr. Lee had touched her shoulders and legs prior to July 2014 which had made her feel uncomfortable. Patient A was unable to identify specific dates when this touching occurred. She did not feel this touching was for a medical purpose. Patient A related these actions as occurring during and after her divorce, commencing somewhere around 2009.

Dr. Lee testified that all physical contact with Patient A was appropriate and medically indicated. Dr. Lee testified that he was always concerned with her best interest as a patient. He said he referred her to many specialists, wrote prescriptions, and filled out special forms.

Patient A testified that Dr. Lee put his hands on her legs above and below the knee and rubbed her legs. She said that sometimes, he would write in her medical record with one hand and put the other hand on her leg. She testified that in summer when she wore a dress, he touched her thigh under her dress. Patient A testified this happened many times.

She said she felt uncomfortable and would get up from the chair and move away to avoid him.

Dr. Lee testified that she never moved to avoid him or moved away and that his examinations were always clinically appropriate.

Patient A testified that he was sitting at his desk, but moved his legs around so he could get close enough to put his left hand on her leg. Dr. Lee denies touching her leg inappropriately as she describes.

Patient A stated that Dr. Lee touched her on the shoulders on several occasions. She said she felt this was touching of a sexual nature. Patient A testified Dr. Lee did not speak when touching her shoulders, but said, “his facial expression was not good”; she testified she knew he was interested in sex by the look in his eyes. Patient A described the look of Dr. Lee as inappropriate. When asked by College counsel what she did when Dr. Lee put his hands on her shoulders, she responded, “I avoid him”. She testified that he did not explain why he was touching her. Patient A testified that she did not like that kind of touching and said that he should have known that, because she moved away from him. She testified that “it did not happen much, a few times”.

Dr. Lee testified he could have touched her shoulders, but not in a sexual way.

Patient A testified that even though this touching made her feel uncomfortable, she continued to see Dr. Lee as it was very difficult to find a family doctor who speaks Mandarin. Patient A testified she did not misunderstand or misperceive what Dr. Lee was thinking or doing.

Patient A acknowledged that she had severe pain and swelling in a number of joints and that she told this to Dr. Lee. She testified that Dr. Lee did not conduct a physical examination of her painful joints. She further testified that an examination of these areas was not needed as she was seeing a rheumatologist.

Patient A testified that one of the medications she tried was Enbrel and it was very expensive. When asked on cross examination whether Dr. Lee had applied for funding for this drug, she said she had forgotten whether it was Dr. Lee as there were lots of doctors who applied for her. When taken to her medical record and shown an email to Dr. Lee from her email address, dated February 2008, extolling the positive effects of Enbrel, and asked whether she wrote it, she replied, "Maybe."

Dr. Lee testified he filled out many forms for her to enable her to get medication.

Patient A was taken to her medical record of June, 2010 where a complete physical examination (CPX) was documented. Patient A responded that it may have been done, but she could not remember about that time. Another entry in June, 2011, records left foot pain; while a physical examination of the foot is documented, Patient A did not remember it taking place.

Patient A testified she attended Dr. Lee in April, 2014, after an absence of two years. Patient A said that she was concerned as she was still having pain in the right thigh and hip after her surgery. Patient A asserted repeatedly that Dr. Lee did not examine her hip. When taken to her medical record, which documents tenderness of the right hip under "objective" indicating an examination, she said that Dr. Lee did not examine her.

Dr. Lee testified that he examined her right hip.

Patient A testified that she had told the College investigator that on her last visit to Dr. Lee, he had examined her ears and throat, because she was suffering from dizziness. When she was told at the hearing that this was not recorded in her chart, Patient A responded that she could not clearly remember.

Patient A testified that she thanked Dr. Lee, but she did not specify on which visits this occurred. She testified that he responded by saying "How will you thank me?" She said that even though she did not think he was asking for gifts, she gave him a gift box (body

wash and shampoo from Shoppers) at Christmas and she gave him ties and shirts during Chinese New Year. Dr. Lee testified that when she gave him gifts, he asked her to take them back, but she left them on the table. Patient A testified that when Dr. Lee did not look at the gifts, she believed his earlier comment “How will you thank me?” was sexual in nature. She agreed he never asked her for sex. Patient A testified she could tell by his tone and facial expression that it was a sexual request. Patient A testified that she thought that by giving him a gift, she thanked him. She wanted him to stop harassing her by touching her shoulders and legs.

Dr. Lee denied ever saying “How will you thank me?”

Patient A testified that she told a College investigator that Dr. Lee had white hair. Patient A testified that the last time she saw Dr. Lee, he had white hair and would not accept that she could be wrong.

Patient A testified that sometime in or about 2011, Dr. Lee asked her to visit his mother as she had no one to visit her. Patient A testified that she met Dr. Lee outside the office at the nursing home where Dr. Lee’s mother was a patient). Dr. Lee denies asking Patient A to visit his mother. Dr. Lee testified that he may have discussed the nursing home as an opportunity for employment for her when she was desperate with financial concerns. Dr. Lee testified he explored other Mandarin speaking possibilities with her as well.

Patient A testified she travelled alone to the nursing home by bus, subway and bus again. Dr. Lee was at the nursing home when she arrived and took her to his mother’s room. At the end of the visit, he thanked her for coming.

Dr. Lee testified that he saw her at the nursing station of the nursing home one day when he was finished with visiting his mother. When he asked why she was there, Dr. Lee testified that Patient A said she was looking for a job. Dr. Lee testified he introduced her to a personal support worker (PSW) and then he introduced Patient A to his mother.

Dr. Lee agreed that Patient A was severely disabled at the time and would be unable to work as a PSW; however, the idea was that she might explore other opportunities.

Patient A testified that Dr. Lee telephoned her sometime later and asked her to visit his mother again. Dr. Lee testified that he never asked Patient A to visit his mother.

Patient A testified she went to the nursing home one more time as she believed Dr. Lee needed help with his mother. Patient A was unsure about the dates of these visits or whether she met with a PSW when she was there.

Dr. Lee testified that he never asked Patient A to visit his mother and would not do so as she lived far away and was living with pain. Dr. Lee testified he was surprised to hear her say that she visited his mother another time; he said he did not know that.

Patient B and her Husband

Both Patient B and her husband gave evidence with the assistance of a Mandarin interpreter as to their visit to Dr. Lee's office in May, 2017. Patient B attended Dr. Lee's office with her husband the previous day, but the office was closed. They returned the next day.

Patient B testified that she had not seen Dr. Lee since November 2016 when she received the first of two injections of Prolia for osteoporosis. She was due for the second injection in May, 2017. She testified that Dr. Lee's office staff had called her residence a number of times to cancel the appointment, but no one answered the telephone. Patient B and her husband testified that they were out of the country until mid-May 2017, and even when home, they said they do not pick up the telephone, because they do not speak English.

Patient B testified that in May, 2017, she requested to have the shot administered, but this was refused by clinic staff. Patient B's husband was seen by Dr. Lee for a follow up of hypertension and Patient B accompanied him to the examination room.

Patient B and her husband testified that they saw the sign in the office indicating that Dr. Lee was not to see female patients without a monitor. Patient B testified that she thought it was fine as she was with her husband. Patient B was upset and crying, because she was concerned about not receiving the injection. Patient B's husband testified he begged Dr. Lee to give her the injection, which Patient B had brought with her. Dr. Lee deferred for a while, but then administered the injection in Patient B's upper arm. Patient B's husband testified that he appreciated what Dr. Lee did for his wife and did not recognize the consequences for Dr. Lee.

The Committee accepted Patient B and her husband to be credible witnesses and their evidence reliable.

Andrea Lee-Ann Wing-Yun Siu

Ms Siu is the College case manager who was assigned carriage of Dr. Lee's file in January 2017. Ms Siu testified that she attended Dr. Lee's office on June 16, 2017. During her visit, she checked the schedule of patients and noted that Dr. Lee had seen Patient B.

Ms Siu testified she checked Patient B's medical record, noting it was last updated in May, 2017. A note in the medical record indicated that Patient B could see Dr. Lee with her husband, but not to book an appointment for her. When Ms Siu questioned an administrative assistant regarding the note, it was explained that Patient B would be acting to assist in her translation and would not be receiving medical services from Dr. Lee.

Dr. Lee neither submitted a billing for Patient B in May, 2017, nor did he make a note on her chart.

The Committee accepted Ms Siu to be a credible witness and her evidence reliable.

Joyce Kwan

Ms Kwan testified that she is a 37 year old Registered Practical Nurse. She has worked continuously with Dr. Lee since 2011 and helps with injections, ear washing, bringing patients in and calling patients to return for results.

Ms Kwan said that Dr. Lee's hair was black and had not changed.

She testified she was present in the clinic in July, 2014 (on the day of Patient A's appointment) and heard no scream. Ms Kwan testified she was able to hear conversations when patients were in the examination rooms if they spoke loudly. Ms Kwan testified there has never been any disturbance related to Dr. Lee. Ms Kwan agreed it was possible that she was showing in another patient when Patient A was last seen by Dr. Lee.

The Committee accepted Ms Kwan to be a credible witness and her evidence reliable.

THE LAW AND LEGAL PRINCIPLES

The Committee recognizes that the onus of proof is on the College to prove the allegations. The standard of proof is on a balance of probabilities, based on clear, cogent and convincing evidence.

Sexual Abuse

Sexual abuse is defined in the Code as follows:

1(3) "sexual abuse" of a patient by a member means,

- (a) sexual intercourse or other forms of physical sexual relations between the member and a patient,
- (b) touching, of a sexual nature, of the patient by the member, or

(c) behaviour or remarks of a sexual nature by the member towards the patient.

(4) For the purposes of subsection (3) “sexual nature” does not include touching, behavior or remarks of a clinical nature appropriate to the service provided.

In this matter, the allegations of sexual abuse refer to conduct under subsections 1(b) and (c).

The Supreme Court of Canada in *R v. Chase*, [1987] 2 SCR 293 speaks as to whether conduct at issue is of a “sexual nature.” The test to be applied is an objective one: “viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer”.

The Committee may consider:

- (a) the body part touched;
- (b) the nature of the contact;
- (c) the situation in which it occurred;
- (d) the words and gestures accompanying the act; and
- (e) all other circumstances surrounding the conduct.

While sexual intent may be a factor in determining whether or not conduct is of a sexual nature or character, it is not a prerequisite to a finding that conduct is of a sexual nature or character. It is one of many factors to be considered in the circumstances.

The Committee considered prior cases heard before the Discipline Committee of this College included in the Brief of Authorities submitted by counsel.

In particular, the Committee notes:

- In *CPSO v. Peirovy* (2017), the female breast was considered private and sensitive both physiologically and emotionally. Female patients have a right to expect that physicians will understand and respect their privacy when examinations of this nature are carried out. The Committee found that deliberate touching of the breast without consent and for no proper medical reason constitutes sexual abuse.
- In *CPSO v. Sazant* (2009), the Committee found that while it was unable to conclude with certainty how often inappropriate contact took place, it was nonetheless satisfied to the requisite degree that sexual contact took place.
- In *CPSO v. Ghali* (2016), the Committee found that kissing a patient on the cheek and hugging was inappropriate in the context of a medical visit. This matter proceeded based on an Agreed Statement of Facts, the allegation of sexual abuse was withdrawn and disgraceful, dishonourable or unprofessional conduct was admitted.

The Committee is cognizant of the serious nature of allegations of sexual abuse of patients by physicians as reflected in recent changes to the law.

Disgraceful, Dishonourable or Unprofessional Conduct

This is a catch-all provision in the professional misconduct regulation under the *Medicine Act, 1991*, intended to capture serious or persistent disregard for a member's professional obligations. Conduct need not be immoral or dishonest to fall within this definition.

Credibility and Reliability

The Committee is aware that credibility and reliability are different concepts. The Committee must assess both the credibility of each witness and the reliability of their testimony. Credibility refers to the witness's sincerity and willingness to speak the truth

as he or she believes the truth to be. Reliability relates to the witness's ability to accurately observe, recall and recount the events in issue. That is, the witness's credibility must be assessed along with whether his or her evidence is reliable and can be counted on to be accurate.

When assessing credibility and reliability, the Committee should look to the totality of the evidence and assess the impact of any inconsistencies. The Committee recognizes that when assessing the credibility of a witness, inconsistencies on minor matters are normal and the Committee need not resolve every alleged inconsistency in the evidence.

In *CPSO v. Beairsto* (2016), at para 69, the Committee set out the factors used for assessing credibility and reliability. In this case, the Committee had regard for the same factors:

- Did the witness seem honest? Is there any reason why the witness would not be telling the truth?
- Did the witness have an interest in the outcome of the case or any reason to give evidence that is more favourable to one side or the other?
- Did the witness seem able to make accurate and complete observations about the events at issue?
- Did the witness have a good memory?
- Did any inability or difficulty that the witness has in recalling events seem genuine, or did it seem made up as an excuse to avoid answering questions?
- Did the witness's evidence seem reasonable and consistent as she/he gave it? Did she/he say something different on another occasion?
- Do any of the inconsistencies in the witness's evidence make the main points of the testimony more or less believable or reliable? Is the inconsistency important? Does it seem like an honest mistake? Is it a deliberate lie? Is the inconsistency because she/he said something different on another occasion, or that she/he failed to mention something? Is there any explanation for the inconsistency and if so, does it make sense?

- What was the witness's manner when she/he testified, recognizing that while demeanor is a relevant factor in a credibility assessment, demeanor alone is a notoriously unreliable predictor of the accuracy of evidence given by a witness?

DECISION AND REASONS

In the matter before the Committee, the evidence given by Patient A and Dr. Lee on the issues to be decided is irreconcilable. Credibility and reliability are central and important. The Committee first addresses the credibility assessment of Patient A and Dr. Lee. The Committee then sets out its decision and reasons on the issues to be determined.

Credibility and Reliability of Patient A

Patient A presented as a disabled, Chinese lady looking her stated age. She ambulated with the assistance of a roller walker and had braces on her arms. She gave testimony through a Mandarin interpreter.

Patient A responded to the questions posed by College counsel in a direct and succinct manner. In responding to questions from counsel for Dr. Lee, Patient A was less direct; often her responses were tangential and, in some cases, evasive.

Examples include the following:

- When asked about whether her divorce was acrimonious, her response was “we had lawyers.” When asked if unfriendly, her response was “the lawyers reached an agreement eventually.” Patient A agreed that she had alleged her husband had affairs, but when asked about her husband's position that she was overly suspicious, she repeatedly responded “he lied.”
- When questioned about whether she had financial concerns around the time of her divorce, she responded, “I didn't borrow any money from Dr. Lee,” “It was okay at the time” and “That's his business not mine.” Patient A did not recall a conversation with Dr. Lee at the time. She testified that it was not the main cause

of her depression. This contradicts the notes in her medical record, which documents depression due to infidelity and an investigation by Revenue Canada.

The Committee notes that Patient A's manner of response and her subsequent explanations were indicative of her perception of events. Patient A's testimony had a defensive rigidity supportive of her view. This is illustrated by the following:

- Patient A repeatedly asserted that Dr. Lee had white hair and could not accept the possibility that she was wrong even when faced at the hearing with Dr. Lee who has black hair. It was confirmed by Ms Kwan that Dr. Lee's hair colour had not changed.
- While Patient A suffered significant pain and swelling of her joints due to RA and complained to Dr. Lee about this, she would not agree that Dr. Lee had a reason to examine her joints. Her response on this issue was "I see my specialist for that." Further, she testified it was not needed. When asked again by defence counsel if Dr. Lee had conducted a physical examination of her joints, she responded, "No".
- When questioned about her recollection of Dr. Lee providing assistance with filling out forms so that she could receive Enbrel, Patient A testified she had specialists, she did not remember, and maybe Dr. Lee had done so. She was taken to an email in which she thanks Dr. Lee for his help. Initially she did not agree she wrote it, responding, "It's been too long, I forgot". Patient A eventually agreed that she sought Dr. Lee's assistance with her RA.

The Committee finds that Patient A's testimony was influenced by her own particular perception of events, as opposed to stating the actual facts, and was self-serving. The following example is illustrative:

- Patient A was questioned about disruptive behavior she had exhibited at a clinic at a hospital. She testified that she did not disturb them. This is contradicted by a note in Patient A's medical record indicating that a physician would not see her

back in the clinic and that Patient A was rude and disruptive while waiting for her appointment.

The Committee noted that Patient A exhibited a degree of exaggeration and faulty logic, making assumptions or leaping to conclusions in giving evidence about what she perceived:

- Patient A testified she knew when a man was interested in sex by the look in his eyes. She also testified that “his (Dr. Lee’s) facial expression was not good” and “the way the eye looks at people is not upright. It’s inappropriate”.
- Patient A testified that her actions by moving away “told him” that she did not like him touching her, because of his action and his facial expression.
- Patient A saw a sexual intent in a number of other areas, such as Dr. Lee’s comment “How will you thank me?”, and when he did not look at gifts she gave him.

The following significant inconsistencies in Patient A’s evidence raised concern in the Committee regarding the accuracy and reliability of her evidence:

- Patient A testified that Dr. Lee did not do physical examinations. Yet, later she agreed that he had done her blood pressure readings and had examined her ears and throat. There are references in the medical record to complete physical examinations. There are also specific references to examination of joints. Patient A repeatedly testified that Dr. Lee did not do any physical examination of her right hip in April, 2014. It is documented under “objective” in Patient A’s medical record that there was tenderness of the right hip.
- Patient A agreed she reported to Ms Carroll, a College investigator, that Dr. Lee examined her ears and throat as she was suffering from dizziness at her last visit in July, 2014. This is not corroborated in the medical record. When faced with the medical record, Patient A testified, “I can’t remember clearly, but I often have dizziness”.

- On cross examination, Patient A testified that she could not remember clearly signing a consent form on her last visit, but when she was shown her signature on a consent form, she said that she remembered signing it and confirmed that she signed the consent form.

While there is some inconsistency in the version of events Patient A reported to the College investigator about what she told Dr. Leung, the Committee did not give this any weight.

In conclusion, while noting that Patient A was consistent in testifying that Dr. Lee had kissed her on the lips, the Committee had significant reservations about her credibility and the reliability of her evidence. She was inconsistent on a number of issues, relayed a self-serving version of personal events, asserted facts that were not supported in evidence, leapt to conclusions and was evasive.

Credibility and Reliability of Dr. Lee

Dr. Lee testified in a quiet manner. He answered all questions directly. Dr. Lee's evidence was consistent with the medical record regarding physical examinations performed. Patient A's medical record demonstrates that by his actions and referrals, Dr. Lee was a compassionate physician engaged in Patient A's medical care.

Dr. Lee was consistent in his denial that he kissed Patient A on the lips, touched her inappropriately or made sexual comments.

The Committee notes some inconsistency in Dr. Lee's description of the events of July, 2014 between a telephone interview with the College, his in-person interview with the College investigator, and his description of the events at the hearing. On the first two occasions, he referred to a "kiss on the cheek" and a "peck on the cheek." At the hearing, Dr. Lee testified that he meant this to be a cheek-to-cheek contact and that he clarified this to the College before the commencement of the hearing. He testified that he greets

some of his family members in this way. While the Committee was concerned with this inconsistent description, the Committee accepts Dr. Lee's explanation that his earlier description of the events to the College was inaccurate because of the nuances of language and his wish to be clear.

Dr. Lee admitted that given the events that transpired in July, 2014, he engaged in unprofessional conduct, in that he committed a boundary violation by an unintended contact of Patient A's cheek with his own, causing upset to his patient.

Dr. Lee admitted the inappropriateness of his action and explained that it was a spur of the moment. He testified that his intention was to show support to Patient A as she was a long-term patient who at the time appeared to have her RA under control. The Committee is of the view that given the duration of the doctor-patient relationship and his involvement in her care, this explanation was plausible.

Dr. Lee and Patient A gave different versions of their meeting at the nursing home. Patient A testified that Dr. Lee asked her to visit his mother. Dr. Lee denies asking Patient A to visit his mother, but agrees he may have said his mother lived there. The Committee accepts that Patient A believed that it would be helpful to Dr. Lee if she visited his mother at the nursing home. The College asks the Committee to accept that Dr. Lee asked Patient A to visit his mother in the nursing home. The Committee, after reviewing the evidence, is not persuaded that Dr. Lee asked Patient A to visit his mother or that he made arrangements to meet Patient A there. The Committee finds no sexual intent or coercion by Dr. Lee in Patient A's visit to the nursing home or the meeting with Dr. Lee while she was there. The nursing home evidence does not affect the Committee's assessment of Dr. Lee's credibility.

The Committee accepts Dr. Lee to be a credible witness and his evidence reliable.

FINDINGS

Issue 1: Did Dr. Lee kiss Patient A on the lips while holding her down in the chair, or otherwise touch, or come close to her face during an office visit in July, 2014? If so, does this constitute sexual abuse and /or disgraceful, dishonourable or unprofessional conduct?

At the hearing, Dr. Lee admitted that his conduct towards Patient A in July, 2014 was unprofessional and would be reasonably regarded by members as disgraceful, dishonourable or unprofessional conduct.

Undisputed Facts

1. Patient A was a patient of Dr. Lee from approximately 2000 to 2014 (except during the periods from June, 2012 to April, 2014 and from December, 2008 to June, 2009).
2. Patient A suffered from RA, which was severe and debilitating.
3. Following a right hip fracture in January 2014, Patient A returned to Dr. Lee as her family doctor for ongoing care.
4. On a visit to Dr. Lee's office in July, 2014, Patient A became upset, because of Dr. Lee's behavior towards her.
5. Dr. Lee bent over her bringing his head close to hers.
6. Patient A shook her head and in doing so left a lipstick mark on Dr. Lee's cheek.
7. A photograph was taken by Patient A on her cell phone in an attempt to demonstrate the lipstick mark.

Disputed Events

Patient A asserts that Dr. Lee kissed her on the lips on July 21, 2014. Dr. Lee asserts this did not happen. Dr. Lee maintains that he bent forward to give Patient A a cheek-to-cheek contact as a gesture of support.

Finding: Issue 1

The Committee accepts that Dr. Lee was sufficiently close to Patient A that a movement of her head resulted in a lipstick smear on his cheek. There was no medical reason for Dr. Lee to be in such close proximity to her. The Committee also accepts that this was a significant event, particularly to Patient A, who reacted angrily and either shouted or scolded Dr. Lee.

However, the Committee was not persuaded that Dr. Lee kissed Patient A on her lips. The Committee carefully considered its assessment of the respective credibility of Dr. Lee and Patient A and the reliability of their testimony in coming to this conclusion.

The evidence given by Dr. Lee was clear and given the long-term relationship with Patient A, the Committee finds that Dr. Lee made a supportive gesture toward Patient A. This is plausible and consistent with Dr. Lee's management and involvement in Patient A's medical problems over the years. Patient A's medical record demonstrates that Dr. Lee is an engaged and caring physician. In the context of Patient A being a patient who had a recent hip fracture, but whose RA was under control, a physician's gesture of empathy or support is, in the view of the Committee, understandable in the circumstances.

The Committee did not accept Patient A's evidence on the issue of the kiss on the lips. It viewed Patient A's testimony as coloured by her subjective view that Dr. Lee wanted a sexual relationship with her. The Committee finds no support for Patient A's allegations that Dr. Lee wanted a sexual relationship with her. In addition, the Committee had other concerns with the reliability of her evidence as set out in the reasons above.

The Committee finds that Dr. Lee did not kiss Patient A on the lips, and the allegation of sexual abuse is not proven.

Nevertheless, Dr. Lee admitted at the hearing that his conduct in July, 2014 was unprofessional and would reasonably be regarded by members as disgraceful, dishonourable or unprofessional conduct.

Based on the events described in the preceding paragraphs, the Committee finds that Dr. Lee came too close to Patient A for no medically justifiable reason, and in doing so he behaved unprofessionally and made her feel uncomfortable. This conduct was disrespectful to Patient A and constitutes a boundary violation.

The Committee finds that the allegation, that Dr. Lee has engaged in an act relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, is proven.

Issue 2: Did Dr. Lee touch Patient A's shoulders and legs in a sexual manner during office visits between 2009 and 2014? If so, does this constitute sexual abuse and/or disgraceful, dishonourable or unprofessional conduct?

Disputed Events

Patient A alleges that Dr. Lee touched her legs and shoulders in a sexual manner. Dr. Lee states that all touching of the shoulders and legs that occurred was appropriate and medically indicated.

The Committee considered the evidence of Patient A and Dr. Lee in conjunction with Patient A's medical record. The Committee was not persuaded that Dr. Lee touched Patient A in a sexual manner.

Patient A had ongoing problems with rheumatoid arthritis which caused pain and swelling in her joints. Under such circumstances, there was a medical indication for physical examination. The medical record notes, in addition to examinations recorded at regular visits, that Patient A had a complete medical assessment recorded on two separate

occasions. In the face of the medical record and the testimony, the Committee rejected Patient A's evidence that Dr. Lee did not do physical examinations. Physical examinations are recorded in the medical record and Patient A agreed that certain examinations had been done. The Committee was satisfied that Dr. Lee performed the appropriate medical examinations as noted in the chart, which would have involved touching of the shoulders and legs of Patient A.

In the Committee's view, Patient A's perception of sexual intent in the actions of Dr. Lee was the result of her subjective interpretation of the events.

Finding: Issue 2

The Committee finds the allegations of sexual abuse and disgraceful, dishonourable or unprofessional conduct by Dr. Lee touching Patient A's shoulders and legs in a sexual manner during office visits between 2009 and 2014 are not proven.

Issue 3: Did Dr. Lee make comments of a sexual nature to Patient A during office visits between 2009 and 2014? If so, does this constitute sexual abuse and/or disgraceful, dishonourable or unprofessional conduct?

Undisputed Facts

1. Patient A gave gifts to Dr. Lee on several occasions.
2. Dr. Lee never asked her for gifts.

Disputed Facts

Patient A alleges that after she thanked Dr. Lee, he responded, "How will you thank me?", which she perceived as a comment of a sexual nature. Dr. Lee denies that he said, "How will you thank me?" or that he made any comments of a sexual nature.

Finding: Issue 3

The Committee considered both the credibility of the witnesses and plausibility of their evidence regarding the events that unfolded.

The Committee was not persuaded that Dr. Lee uttered the words “How will you thank me?” in the manner described by Patient A. While the Committee recognizes that the true meaning of the alleged words may suffer in translation from Mandarin to English, the Committee finds no support in the evidence to assign a sexual connotation to the alleged words.

Patient A considered it appropriate to give Dr. Lee small gifts. Dr. Lee testified that he had asked her to take the gifts back, but she left them on the table. Dr. Lee’s reluctance to accept her gifts was interpreted by Patient A to mean that he was asking for sexual favours. The Committee accepts Dr. Lee’s evidence that he did not make comments of a sexual nature to Patient A.

Therefore, the Committee finds the allegations, of sexual abuse or disgraceful, dishonourable or unprofessional conduct with respect to comments of sexual nature, are not proven.

Issue 4: Did Dr. Lee breach the ICRC Order of January 30, 2017 by administering an injection to Patient B? If so, does this constitute professional misconduct as alleged?

Dr. Lee did not dispute that he administered an injection to Patient B and that this constituted a contravention of the ICRC Order dated January 30, 2017.

Dr. Lee fully understood the Order and modified his practice accordingly. However, he acceded to the request of the patient, Patient B, that he administer an injection to her. Dr. Lee agreed that it was not an urgent situation requiring immediate action and that no harm would occur if Patient B had to wait, even though she was very upset, fearing she

would not get the medication. In addition, Dr. Lee was working in a group practice and could have referred her to another physician in the clinic.

While on its face this particular transgression by Dr. Lee may appear minor, the College relies on the honesty and integrity of its members to abide by orders of its Committees to regulate the profession in the public interest. The ICRC orders and the orders of other College Committees are made to ensure safety of the public.

When, as here, there is a failure by a member to adhere to such an Order, in a non-emergency circumstance, where reasonable treatment alternatives are available, and where care is not critical in terms of patient safety, this constitutes professional misconduct and sanction must follow.

Finding: Issue 4

The Committee finds that Dr. Lee engaged in disgraceful, dishonourable or unprofessional conduct by breaching the Order of the ICRC dated January 30, 2017.

The Committee orders that the Hearings Office schedule a penalty hearing pertaining to the findings made at the earliest opportunity.

**Indexed as: Ontario (College of Physicians and Surgeons of Ontario) v. Lee,
2018 ONCPSD 65**

**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. CHEE CHOON LEE

PANEL MEMBERS:

**DR. W. KING (CHAIR)
MR. P. GIROUX
MR. A. RONALD
DR. P. CHART**

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

MS A. CRANKER

COUNSEL FOR DR. LEE:

MR. J. LILLES

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS. J. McALEER

PUBLICATION BAN

Penalty Hearing Date:	May 28, 2018
Penalty Decision Date:	November 27, 2018
Written Penalty Decision Date:	November 27, 2018

PENALTY DECISION AND REASONS FOR DECISION

On December 14, 2017, the Discipline Committee of the College of Physicians and Surgeons of Ontario found that Dr. Chee Choon Lee committed an act of professional misconduct, in that he has engaged in an act or omission relevant to the practice of medicine that, having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonorable, or unprofessional.

On May 28, 2018, the Discipline Committee heard evidence and submissions on penalty and costs and reserved its decision.

THE FINDINGS

In its Decision and Reasons for Decision of December 14, 2017, the Committee found that Dr. Lee engaged in an act or omission that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional conduct, by the following:

1. At an appointment in July of 2014, the Committee found that Dr. Lee was sufficiently close to Patient A that a movement of her head resulted in a lipstick smear on his cheek. There was no medical reason for Dr. Lee to be in such close proximity to Patient A. The Committee also accepted that this was a significant event, particularly to Patient A, who reacted angrily and either shouted or scolded Dr. Lee. Dr. Lee had admitted that this behaviour constituted disgraceful, dishonourable or unprofessional conduct.
2. The Committee found that Dr. Lee breached an interim order of the ICRC dated January 30, 2017. Dr. Lee did not dispute that he administered an injection to Patient B and that this constituted a contravention of the ICRC Order dated January 30, 2017.

It is important to note that the Committee also found that:

1. The College had not proven the allegation of sexual abuse in relation to Dr. Lee's conduct at the July 2014 appointment and specifically that Dr. Lee had kissed Patient A on her lips.
2. The College had not proven that Dr. Lee touched Patient A's shoulders and legs in a sexual manner during office visits between 2009 and 2014, and therefore the allegations of sexual abuse and/or disgraceful, dishonourable or unprofessional conduct were not proven with respect to these alleged acts.
3. The College had not proven that Dr. Lee made comments of a sexual nature to Patient A during office visits between 2009 and 2014, and therefore the allegations of sexual abuse and/or disgraceful, dishonourable or unprofessional conduct were not proven with respect to these alleged remarks.

SUBMISSIONS ON PENALTY

The College sought the following penalty and costs order:

- a six-month suspension of Dr. Lee's certificate of registration, effective 15 days from the date of the order;
- the imposition of terms, conditions and limitation on Dr. Lee's certificate of registration including, (i) remedial education in communication and medical ethics; (ii) monitoring of all professional encounters with patients, indefinitely, by a Practice Monitor; (iii) notification of practice locations; (iv) posting a sign and translation in all practice locations regarding the presence and continuous observation of Practice Monitor; (v) direct notification to each patient of his practice restrictions; and (vi) ongoing monitoring to ensure compliance;
- a reprimand; and,
- costs payable to the College for four days of hearing at the current tariff rate of \$10,180.00 per diem, for a total of \$40,720.00.

Counsel for Dr. Lee submitted that the appropriate penalty is:

- a two-month suspension of Dr. Lee's certificate of registration; and,
- a reprimand.

Counsel for Dr. Lee submitted that Dr. Lee should not be required to pay costs to the College.

Therefore, the parties agree that a suspension and a reprimand should be ordered and dispute the length of suspension to be imposed, the need for terms, conditions and limitations in relation to remediation and monitoring, as well as costs.

EVIDENCE ON PENALTY

The College did not call any witnesses during the penalty phase of the hearing. Dr. Lee's counsel called four character witnesses who were all patients of Dr. Lee, one character witness, Dr. Katherine Chu, who received referrals from Dr. Lee, and Dr. Graham Glancy, a forensic psychiatrist retained by Dr. Lee to provide expert evidence on risk assessment.

A number of documents were entered into evidence on the penalty phase of the hearing, including a certificate of attendance for Dr. Lee at the course "Understanding Boundaries and Managing Risks Inherent in Doctor-Patient Relationships," correspondence between counsel for the parties, and the report and C.V. of Dr. Graham Glancy. The Committee also admitted, on consent of the parties, a number of letters of support for Dr. Lee.

Summary of the Evidence

Patient Witnesses

The Committee heard evidence from four of Dr. Lee's patients: Patient K, Patient L, Patient M, and Patient N. Each testified with respect to Dr. Lee's professional manner, ease of communication, and care and compassion.

Physician Colleague Witness - Dr. Katherine Chu

The Committee also heard from Dr. Katherine Chu. Dr. Chu is an obstetrician and gynaecologist who practises in Ontario. Dr. Chu testified that she has known Dr. Lee through his referrals since 1999. She testified that she has seen hundreds of Dr. Lee's patients over the years and she has never heard patients express any concern. She observed that Dr. Lee's patients are loyal and do not change their doctor.

Expert Witness- Dr. Graham Glancy

The Committee accepted Dr. Glancy as an expert in forensic psychiatry. He was permitted to give expert opinion evidence about Dr. Lee's risk assessment. Dr. Glancy testified that his assessment of Dr. Lee was based on a four-hour interview with Dr. Lee. Dr. Glancy also interviewed Dr. Lee's wife and Dr. Benny Chan who is a colleague of Dr. Lee to obtain collateral information. Dr. Glancy also reviewed the results of personality testing, and a number of risk assessment tests. The risk assessment testing included the following:

- Hare Psychopathy Checklist (PCL-R);
- Static 2002R; and
- Risk of Sexual Violence (RSVP).

Dr. Glancy explained that these actuarial instruments were developed for sexual offenders and while they can be indirectly applied to boundary violations, they may actually over-predict. The risk assessment tests showed a low probability of future sexual violence.

Dr. Glancy opined that Dr. Lee demonstrated no personality disturbance, personality disorder or thought disorder. Dr. Glancy found no history of antisocial behaviour or family history of psychiatric disorder. He did not find Dr. Lee to be impulsive, rather he found him to be conventional throughout his life. Dr. Glancy considered this “rule bound” aspect to be a positive feature in lowering the risk of recidivism.

Dr. Glancy’s composite assessment was that Dr. Lee had a low probability of recurrence of his boundary violation. He noted also that Dr. Lee had some insight into boundary violations and while not talkative, he was aware of the effects of his behaviour on patients. Dr. Glancy testified that Dr. Lee took the boundary course to heart and learned from it.

Dr. Glancy noted that Dr. Lee’s attempt at cheek-to-cheek contact with Patient A was a spontaneous and impulsive act, and not a pattern of behaviour. Even considering the circumstances of the breach, Dr. Glancy was of the opinion that Dr. Lee was a rule-follower and the breach was out of character for Dr. Lee. Dr. Glancy concluded that Dr. Lee had a low probability of re-offending.

LEGISLATION AND LEGAL PRINCIPLES

The jurisdiction of the Discipline Committee in respect of penalty is set out in section 51(2) of the Health Professions Procedural Code, which states:

51(2) If a panel finds a member has committed an act of professional misconduct, it may make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.
2. Directing the Registrar to suspend the member's certificate of registration for a specified period of time.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified or indefinite period of time.
4. Requiring the member to appear before the panel to be reprimanded.
5. Requiring the member to pay a fine of not more than \$35,000 to the Minister of Finance.
- 5.1 If the act of professional misconduct was the sexual abuse of a patient, requiring the member to reimburse the College for funding provided for that patient under the program required under section 85.7.
- 5.2 If the panel makes an order under paragraph 5.1, requiring the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 5.1. 1991, c. 18, Sched. 2, s. 51 (2); 1993, c. 37, s. 14 (2).

In reaching its decision on penalty, the Committee was mindful of the well-established penalty principles which guide the determination of an appropriate order. First and foremost, the penalty must protect the public. The penalty should also provide specific deterrence to the member and general deterrence to the profession. In addition, the penalty should reflect the profession's disapproval of the misconduct and maintain public confidence in the College's ability to regulate the profession in the public interest. Where appropriate, the penalty must provide the potential for rehabilitation of the physician. In addition to these principles, the Committee must consider any aggravating or mitigating factors in determining the appropriate penalty. The penalty should also be proportionate given the circumstances of the particular case.

DECISION AND REASONS ON PENALTY

The Committee has decided that the appropriate penalty and cost order in this matter is:

- a three-month suspension of Dr. Lee's certificate of registration;
- a reprimand; and
- costs payable to the College in the amount of \$21,180.00.

In reaching its decision, the Committee considered the following factors.

Nature of the Misconduct

As discussed above, the Committee made a finding of disgraceful, dishonourable or unprofessional conduct on two grounds.

The first finding related to Dr. Lee's behaviour towards Patient A when he came close to her in an attempt at cheek-to-cheek contact. This gesture was inappropriate and resulted in Patient A interpreting Dr. Lee's conduct as having a sexual meaning. Clearly, Dr. Lee's gesture was unwarranted and made Patient A uncomfortable. Such behaviour is unthinking, particularly with a patient rendered especially vulnerable because of chronic illness. While the Committee did not make a finding of sexual abuse in this matter, the behaviour exhibited by Dr. Lee set the stage for a reasonable misinterpretation of his actions by his patient. Dr. Lee is a mature physician with many years of experience; as such, the Committee would have expected him to be more sensitive to his patient and the impropriety of his actions.

The effect of Dr. Lee's gesture on Patient A was immediate and dramatic as was made clear in her testimony. Even though the Committee did not accept certain aspects of her evidence, it was clear to the Committee that she felt violated and that her personal space was invaded.

The second finding of misconduct arose from the breach of an ICRC Order. While the circumstances of the breach may appear to downplay the seriousness of the misconduct, Dr. Lee was well aware that he was prohibited from having encounters with female

patient without the presence of a monitor. He had alternatives available to him, but chose the expeditious path, acceding to his patient's wishes. Further, he did this at a time when he knew he was under investigation by the College for the allegations related to Patient A and went ahead anyway. His decision to provide the injection to Patient B was a conscious decision and not a momentary lapse in judgment.

In determining the appropriate order in this case, the Committee considered the totality of the findings. In the Committee's view, Dr. Lee's disrespectful conduct towards Patient A combined with a breach of an undertaking to the College merits a significant sanction.

Aggravating Factors

The Committee finds that the nature of Dr. Lee's professional misconduct as described above is an aggravating factor. In particular, Patient A was a vulnerable patient and Dr. Lee made her feel uncomfortable and disrespected her personal space. With respect to the breach of the undertaking, the fact that Dr. Lee deliberately breached the undertaking is an aggravating factor.

Mitigating Factors

Dr. Lee admitted the conduct, which formed the basis of the Committee's findings of disgraceful, dishonourable and unprofessional conduct. He acknowledged that his conduct toward Patient B was unprofessional and did not dispute that he had breached his undertaking with the College.

Further, Dr. Lee has been in practice for many years and this is the first referral to the Discipline Committee.

Risk Assessment by Dr. Glancy

The Committee carefully reviewed Dr. Glancy's evidence, including his expert report. Dr. Glancy performed a comprehensive assessment, which included a review of the circumstances leading to the misconduct, a detailed psychiatric assessment of Dr. Lee including a four hour-interview, psychological testing, actuarial risk assessment testing, and collateral interviews.

Based on his assessment, Dr. Glancy concluded that Dr. Lee had a low probability of re-offending or engaging in any other doctor-patient boundary violations. Dr. Glancy's evidence included his opinion that the risk of recurrence is lowered even further because Dr. Lee is now over 70 years old, is aware of the effects of his actions on patients, and takes responsibility for his actions.

Dr. Glancy was asked to comment on Dr. Lee's participation in the professional boundaries course. While the initial report suggested some inattention, deficits in personal insight and minimal participation, the final report was rated good with the comment that insight was sound. It was Dr. Glancy's opinion that Dr. Lee is not talkative and this may have coloured the initial comments.

The Committee accepted Dr. Glancy's opinion that Dr. Lee did not minimize his professional misconduct and has taken responsibility for his actions. Dr. Lee appears to have learned from the professional boundaries course. Dr. Glancy reported that the misconduct was out of character and not part of a pattern of impulsivity. According to Dr. Glancy, Dr. Lee had general insight into boundary violations and was clear that he understood the effect of his actions on Patient A and that they were wrong.

Character Evidence

The Committee had before it many letters and testimony from witnesses attesting to the respect many patients have for Dr. Lee. There are some consistent factors that emerge from these character references, which provide a picture of how Dr. Lee interacts

generally with his patients. Each of the patients who testified spoke to Dr. Lee's caring and compassionate nature, and his empathy and clarity in explaining his opinions to his patients. Dr. Katherine Chu, who has seen hundreds of female patients referred by Dr. Lee for obstetrical/gynaecological problems, commented on the loyalty of his patients and the fact that no concerns were ever raised with her by patients regarding Dr. Lee's care or conduct. These letters of support suggest that the professional misconduct at issue in this case was out of character for Dr. Lee. The fact that Dr. Lee has strong support among his patients in no way excuses the professional misconduct in this case, however, it does assist the Committee in understanding Dr. Lee's general reputation among his patient population.

Case Law

Finally, to address the appropriateness of the penalty to be imposed in this case, the Committee had regard to the case law submitted by the parties. While the Committee is not bound by prior cases of the Committee, it may be guided by the reasoning and outcomes in similar cases and the principles stated therein.

In *CPSO v. Wilson*, 2016 ONCPSD 46, the Committee made a finding of disgraceful, dishonourable or unprofessional conduct following a finding that Dr. Wilson displayed a lack of simple courtesy and respect for a teenage patient he examined. As with Patient A, this patient was emotionally traumatized by the physician's conduct. Dr. Wilson had previously been cautioned in regard to his technique and communication style. In Dr. Wilson's case, there was a joint submission on penalty. The Committee accepted the joint submission and ordered a four-month suspension of Dr. Wilson's certificate of registration, continued monitoring of Dr. Wilson's practice, and a reprimand.

In *CPSO v. Ghali*, 2016 ONCPSD 18, the Committee made a finding of disgraceful, dishonourable or unprofessional conduct on the basis that Dr. Ghali hugged and kissed a patient on the cheek on two occasions. The evidence was that this conduct was intended as a supportive gesture, but unwelcomed by the patient. There was a joint submission on

penalty. The Committee accepted the joint submission and ordered a three-month suspension of Dr. Ghali's certificate of registration, a reprimand, and that Dr. Ghali successfully complete a course on Understanding Boundaries. This case was helpful to the Committee as Dr. Ghali's professional misconduct was somewhat similar to Dr. Lee's professional misconduct, although Dr. Lee has the additional finding that he breached the ICRC Order. No ongoing supervision was ordered in the *Ghali* case.

In *CPSO v. Raja*, 2018 ONCPSD 22, the Committee made a finding of disgraceful, dishonourable or unprofessional conduct on the basis that the physician's conduct, which was found to be disrespectful and unthinking during a clinical examination, left the patient confused about Dr. Raja's motive. As with Patient A, this patient felt threatened and fearful. The Committee accepted the joint submission on penalty and ordered a two-month suspension of Dr. Raja's certificate of registration, and a reprimand. Unlike Dr. Lee's case, there was no breach of an order or undertaking by Dr. Raja. No monitoring was ordered in Dr. Raja's case.

The above three cases were of assistance to the Committee as the circumstances of those cases were the most analogous to Dr. Lee's case. The Committee also had regard for the many other cases submitted by the parties, including those addressing a breach of undertaking. After a careful review and consideration of Dr. Lee's professional misconduct, the Committee is of the view that a reprimand and a three-month suspension of Dr. Lee's certificate of registration falls within a reasonable range of penalty ordered by prior panels of the Discipline Committee for similar professional misconduct.

Conclusion

The Committee based its decision on the relevant penalty principles, case law and the evidence as noted above.

Suspension

The Committee determined that a three-month suspension of Dr. Lee's certificate of registration is appropriate in the circumstances of this case. The three-month suspension recognizes the seriousness of the findings in this case, and should serve as both a specific deterrent to the member, and a general deterrent to the profession. The order of suspension of Dr. Lee's certificate of registration should further serve to maintain the integrity of the profession and the public confidence in the College's ability to regulate the profession in the public interest.

Terms, Conditions and Limitations

Monitoring

The College asked for indefinite ongoing monitoring for all patient encounters. The Committee finds that the findings of misconduct in this matter do not merit this kind of intensive oversight. Dr. Glancy's opinion was that Dr. Lee acted out of character both with Patient A and in his breach of undertaking, and that there was a low probability for recurrence of professional misconduct. The Committee accepted Dr. Glancy's opinion that Dr. Lee is rule-bound and impulsivity is not a feature of his character. In the Committee's view, the degree of monitoring sought by the College is unduly onerous given the Committee's findings in this case.

Rehabilitation

The College seeks remedial education in medical ethics and communication. Dr. Lee successfully completed the course in Understanding Boundaries and Managing the Risks Inherent in Doctor-Patient Relationships in 2015.

The Committee finds no evidentiary basis for further remedial education. A common theme in many letters of support provided by patients on behalf of Dr. Lee is that Dr. Lee

is a good communicator who takes the time and explains issues clearly to his patients. This is also supported by the evidence of Dr. Chu who commented on the loyalty of Dr. Lee's patients. In addition, Dr. Glancy expressed his view, which the Committee accepted, that Dr. Lee understood and had insight into his misconduct. Given the above, the Committee does not find that Dr. Lee suffers from a moral deficit or a lack of communication skills, which would require further remediation.

Dr. Lee is 70 years old, a seasoned family doctor, valued by his patients and able to communicate with them in Mandarin. He has a valuable role in servicing a multicultural population. Had the Committee found that remedial education was needed, the Committee would have had no hesitation ordering it.

Reprimand

Both the College and Dr. Lee agree that a reprimand is appropriate. Reprimands should not be treated lightly by members of the profession. Reprimands give the Committee an opportunity to speak directly to the member and convey the Committee's view of the member's misconduct directly to the member. In this matter, the reprimand should serve as a specific deterrent to Dr. Lee and as a general deterrent to the profession.

COSTS

The College requests costs for four days of hearing, at the College's tariff rate, in the amount of \$10,180.00 per diem. Dr. Lee submits that this is punitive and unfair.

The Committee considered the following in arriving at its decision on the quantum of costs:

- The daily tariff rate at the time of the hearing on the allegations (September 19 to 21, 2017) was \$5,500.00. The current rate, which was applicable on the date of the hearing penalty, is \$10,180.00;

- The College was only partially successful in proving the allegations; and
- Dr. Lee made a proposal for settlement, which was essentially similar to the Committee's conclusion and which the College did not accept.

The Committee finds that this is an appropriate case in which to award costs to the College for two of the hearing days required to hear the allegations, given that the College was only partially successful in proving the allegations. Further, in the interest of the time lapse between the hearing and penalty, the Committee has opted to exercise its discretion and impose the tariff for those two hearing days at the rate of \$5,500.00 per diem, which was the tariff rate at the time of the hearing on the allegations. The Committee notes, however, that costs are procedural in nature and the presumption against the retrospective application of changes to the cost regime does not apply. In other cases, this Committee has applied changes in the cost regime retrospectively to hearings dates that took place before the tariff was increased. The fact that the Committee has decided in this case to apply the tariff rate of \$5,500 to two of the dates required for the hearing of the allegations should not be seen as a precedent in support of always doing so. Costs are always in the discretion of the Committee. The Committee finds that a date would have been required for a penalty hearing, even if the parties had come forward with a joint penalty proposal (which was not the case). In result, the Committee finds that Dr. Lee should also pay the College costs for the date of the penalty hearing at the current tariff of \$10,180.00. As such, the costs order includes the following: \$11,000 (\$5,500.00 x 2 days of hearing days) and \$10,180 (day of penalty hearing) for a total of \$21,180.00.

ORDER

Therefore, the Discipline Committee orders and directs that:

1. The Registrar suspend Dr. Chee Choon Lee's certificate of registration for a period of three (3) months, to commence 15 days from the date of this order.

2. Dr. Lee is required to appear before the panel to be reprimanded.
3. Dr. Lee pay to the College costs in the amount of \$21,180.00 within 30 days of the date of this Order.