

NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Kelvin Wing-Ming Leung, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the names or any information that could disclose the identity of the patients referred to orally or in the exhibits 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... 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. Leung,
2018 ONCPSD 3**

**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. KELVIN WING-MING LEUNG

PANEL MEMBERS:
DR. P. POLDRE (Chair)
MR. P. GIROUX
DR. M. DAVIE
MR. P. PIELSTICKER
DR. P. CASOLA

COUNSEL FOR THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO:

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COUNSEL FOR DR. LEUNG:

MS K. GRACE
MR. C. HUBBARD
MS E. CHESNEY

INDEPENDENT COUNSEL FOR THE DISCIPLINE COMMITTEE:

MS J. McALEER

Hearing Date: December 11, 2017
Decision Date: December 11, 2017
Release of Written Reasons: February 12, 2018

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 December 11, 2017. At the conclusion of the hearing, the Committee released a written order stating its finding that the member committed an act of professional misconduct and setting out its penalty and costs order with written reasons to follow.

THE ALLEGATIONS

The Notice of Hearing dated January 18 and May 2, 2017 alleged that Dr. Kelvin Wing-Ming Leung committed an act of professional misconduct:

1. under paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* (“O. Reg. 856/93”), in that he has failed to maintain the standard of practice of the profession; and
2. under paragraph 1(1)33 of 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.

The Notice of Hearing also alleged that Dr. Leung is incompetent as defined by subsection 52(1) of the Health Professions Procedural Code (the Code), which is Schedule 2 to the *Regulated Health Professions Act, 1991*.

RESPONSE TO THE ALLEGATIONS

Dr. Leung admitted the allegations in paragraphs 1 and 2 in the Notice of Hearing, that he has failed to maintain the standard of practice of the profession and that he has engaged in conduct or an act or omission relevant to the practice of medicine that, having regard to all the

circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. Counsel for the College withdrew the allegation of incompetence.

THE FACTS

The following facts were set out in the Agreed Statement of Facts and Admission, which was filed as an exhibit and presented to the Committee:

A. FACTS

1. Dr. Kelvin Wing-Ming Leung is a 50 year-old general practitioner, practising at a Medical Centre in Toronto, Ontario. Dr. Leung received his Independent Practice Certificate in 1993.

Mandatory Report

2. In December 2014, the College received a mandatory report from a family physician concerning Dr. Leung's treatment of a teenage patient (the "2014 Mandatory Report"). The patient had attended at Dr. Leung's office for a follow up for chlamydia. The reporter expressed concern about Dr. Leung's treatment of hemorrhoids in a patient who had attended at his office for a follow up for chlamydia. The patient did not consent to be identified in the report.

Patient A

3. In December 2014, Patient A presented at the Medical Centre with knee pain. On examining her hip and lower abdomen, Dr. Leung queried a potential ovarian abnormality. Dr. Leung conducted a vulvar, pelvic and visual peri-anal examination of Patient A, during which he noted an internal hemorrhoid which he proceeded to incise and cauterize.
4. In January 2015, Patient A complained to the College about the care she received from Dr. Leung.

5. The College retained the services of Dr. Anastasios Tom Leventis to review the care provided by Dr. Leung to Patient A. Dr. Leventis opined, in part, as follows:

Positive finding:

The plan-recommended seemed appropriate for the patient to use anti-inflammatories and to participate in physical therapy.

Concerns:

The care provided to Ms A by Dr. K Leung did not meet the standard of practice of the profession expected. This is for many reasons including: poor record keeping, examining the patient's lower abdomen when not indicated, a pelvic exam when not indicated, a peri anal exam in an asymptomatic patient and subsequently recommending and performing a hemorrhoid treatment that was neither indicated nor evidence based.

It is not expected that a patient presenting with knee pain have an abdominal exam. The abdominal exam (which was not documented) in this encounter, subsequently led to the pelvic exam as per Dr. Leung. I strongly disagree that this patient required an abdominal exam nor a pelvic exam. The pelvic exam subsequently led to a peri anal exam as per Dr. Leung. The peri anal exam led to an overdiagnosis of a hemorrhoid. The peri anal exam subsequently led to a non-indicated treatment of an asymptomatic hemorrhoid. This is a very concerning patient encounter.

...

Dr. Leung's care of Ms A displays a lack of knowledge in that he performed an exam of the abdomen, pelvis and peri anum that was not indicated. He also treated Ms A's asymptomatic hemorrhoid which was not indicated.

...

Dr. Leung performed a peri anal and pelvic exam without indication and subsequently treated a hemorrhoid without indication. His treatment fell below the standard of care expected by the medical profession. His knowledge and

judgment with respect to hemorrhoid treatments and performing non indicated peri anal and pelvic exams falls well below the standard expected by the profession. Providing this patient with a non-indicated pelvic exam and subsequently a non-indicated hemorrhoid treatment exposes this patient to harm.

A copy of Dr. Leventis' report dated November 16, 2016 is attached at Tab 1 [to the Agreed Statement of Facts and Admissions].

6. Dr. Leung obtained and delivered a report from Dr. Howard L. Rudner, opining on the care provided to Patient A. The following are excerpts from Dr. Rudner's report dated April 8, 2015:

Indeed, when questioned about Dr. Leung's pelvic examination, Ms [A] acknowledged that, "Nothing seemed out of the ordinary" (Transcript of CPSO Interview with [Ms. A] dated February 19, 2015, p. 20).

...

Certainly, the pelvic examination in Ms [A]'s mind was "like your normal vaginal examination" (Transcript of CPSO Interview with [A] dated February 19, 2015, p. 2). Even while Dr. Leung was conversing with her during the procedure, she noted that "Nothing sounded out of the ordinary to me like cause I've had many vaginal exams and it sounded pretty standard" (Transcript of CPSO Interview with [Ms A] dated February 19, 2015, p.13).

The Investigation

7. Based on information included in the 2014 Mandatory Report and Patient A's complaint, investigators were appointed pursuant to s. 75(1)(a) of the *Health Professions Procedural Code* to conduct a review of Dr. Leung's practice of hemorrhoid treatment (the "Investigation").

8. Dr. Leung voluntarily stopped performing all hemorrhoid procedures upon being advised of the Investigation and the potential concerns regarding the appropriateness of those procedures.
9. Dr. Leung has not performed any hemorrhoid procedures since that time, and has agreed not to perform any such procedures in the future.
10. Based on a review of ten female patient charts and patient interviews, as well as an interview with Dr. Leung, Dr. Leventis opined, in part, as follows:

Positive findings:

Ms B was seen for genital warts in December, 2012 and treated appropriately with podofilin...Ms B was interviewed by the college investigator on October 19, 2015. Important points include the patient was comfortable with the care provided. No Chaperone was used, but she was comfortable. She had hemorrhoids more than 10 years ago and again several years ago after the birth of her child and asked to be examined.

...

Ms C was diagnosed with a UTI at this visit and appropriately treated with Macrobid.

...

At this visit, for which Ms D had an appropriate pelvic exam and vaginal swab for Chlamydia...

...

Dr. Leung did educate her about conservative measures (dietary changes) according to Ms E.

...

He did appropriate counseling for Ms F headaches and documented this...We also discussed the differential diagnosis of pelvic pain at [Dr. Leung's] interview, for which he displayed a good knowledge base...On the second visit she had an appropriate pelvic exam, without swabs.

...

I am not concerned about knowledge, judgment or skill with respect to prenatal care Ms G. He is not exposing patients to harm with respect to prenatal care.

...

In April, 2015 she was seen for a plantar wart treatment, the treatment was well documented and appropriate...No concern regarding knowledge, skill, or judgment. He did not expose Ms H to harm.

...

In January, 2017, Ms I was diagnosed with peri anal warts. She subsequently was treated appropriately with podofilm.

Summary of Concerns:

My specific concerns included Dr. Kelvin Leung performing intimate exams (rectal, peri-anal) without clear indication and consent. His record keeping in all ten charts fell below the standard expected. After reviewing his notes, interviewing Dr. Leung and reading the transcripts of the interviews there is a lack of informed consent to perform intimate exams and hemorrhoid treatments. Based on my review, multiple rectal area exams and hemorrhoid treatments did not have clear explicit indications. His treatment of 9 of the 10 patients reviewed, falls below the standard of care expected by the medical profession...His knowledge and judgment with respect to hemorrhoid treatments falls below the standard expected by the profession. Providing these treatments exposed 9 patients to potential harm.

A copy of Dr. Leventis' report dated February 8, 2016 is attached at Tab 2 [to the Agreed Statement of Facts and Admissions].

11. Dr. Leventis provided an addendum dated May 11, 2016, a copy of which is attached at Tab 3 [to the Agreed Statement of Facts and Admissions], which Dr. Leventis opines as follows:

Lastly I would like to discuss the issue of harm. Dr. Leung states none of his patients' experienced "actual harm" as a result of the hemorrhoid procedure he performed. I agree I cannot conclude any of these patients experienced actual

physical harm. My concern is they had a procedure on the peri anum that is not the standard of practice (as Dr. Leung agrees). If someone has a small hemorrhoid found incidentally on exam and is recommended a treatment that is not the standard of practice, this concerns me. This may be considered harm.

12. Dr. Leventis was provided with ten male patient charts for review and in his second report dated July 27, 2016 (Tab 4 [to the Agreed Statement of Facts and Admissions]) he opined, in part, as follows:

Positive findings:

At the February 17th visit Dr. Leung appropriately recommended conservative measures for the Mr. K's anal complaint. In February, 2015, Mr. K returned for follow up, again the note was brief and Dr. Leung noted the patient was feeling better. Again, Dr. Leung recommended conservative measures, which is appropriate.

...

Mr. L was treated appropriately with conservative measures on two dates in November, 2012 (2 visits for hemorrhoid concerns). With respect to the care provided to Mr. L, Dr. Leung met the standard of practice of the profession. He did not display a lack of knowledge, lack of skill, nor a lack of judgment. He did not expose this patient to harm.

...

He was seen for a rash, cough and hemorrhoid concern. He was seen for hemorrhoid concerns on two dates in October, 2014. He was assessed appropriately and treated appropriately with conservative measures. This patient did not have a treatment by incision and cautery...The treatment provided meets the standard of care expected. He did not display a lack of knowledge, lack of skill, nor a lack of judgment. He did not expose Mr. M to harm.

...

His treatment plan with respect to conservative measures for hemorrhoids is appropriate... He did not display a lack of skill or lack of judgment. He did not expose Mr. N to harm.

...

Mr. O was diagnosed with a small hemorrhoid and advised conservative measures. With respect to the care provided by Dr. Leung, it met the standard of care expected of the profession. He did not display a lack of knowledge, lack of skill, nor a lack of judgment. He did not expose this patient to harm.

...

His treatment plan Mr. P seems appropriate in that Dr. Leung recommended conservative measures. The care provided met the standard of care expected. He did not display a lack of knowledge, lack of skill, nor a lack of judgment. He did not expose this patient to harm.

...

Summary of Concerns:

His record keeping in all ten charts fell below the standard expected. Based on my review, multiple hemorrhoid treatments did not have clear explicit indications. Dr. Leung met the standard of the profession with respect to care provided in 4 of the 10 charts....In 5 of the 10 charts reviewed Dr. Leung displayed a lack of knowledge and judgment with respect to the hemorrhoid treatment provided. He was over treating hemorrhoids without a period of conservative measure. Regardless of this, the treatment protocol used in not evidence based nor the standard of care...Dr. Leung exposed 5 of the 10 patients to potential harm in performing a procedure on the perineum that was not indicated.

13. Dr. Leung obtained and delivered a report by Dr. Rudner regarding Dr. Leung's practice. The following are excerpts from Dr. Rudner's report dated May 22, 2017:

I also noted in those cases where, in my opinion, GU examinations were performed for legitimate reasons.

Summary of findings

Below is a summary of my findings, including the specific visit dates for each patient, indicating the reason(s) for and the type(s) of the relevant examination(s) performed.

1. Ms I

Sep /11 and Sep /11- vaginal discomfort and for pap- pelvic, GU, pap smear

Jan /12, Jan /12, Feb/12, Feb/12, Feb/12, Mar/12 and Mar/12- anal genital warts- GU

Dec /12- left pelvic fullness- pelvic

Aug /13-? right ovarian cyst- pelvic

Mar /14- complete check up- pelvic, GU

2. Ms J

Jan /14— complete check up- pelvic, GU

...

4. Ms. E

Feb /14- vaginal discomfort and discharge—pelvic, GU

...

8. Ms G

Jan /15- complete check up - pelvic, GU, pap smear

Mar /15- pregnant, pelvic pain- pelvic

Apr /15 - pregnant, pelvic pain- pelvic

9. Ms D

Aug /14-STI check—pelvic, swabs

14. By Notice of Hearing dated January 18, 2017, the following allegations were referred to the Discipline Committee:

- (a) Dr. Leung failed to maintain the standard of practice of the profession in his care and treatment of patients; and
 - (b) Dr. Leung engaged in disgraceful, dishonourable or unprofessional conduct in performing and billing for unnecessary examinations and procedures.
15. An Interim Order dated February 10, 2017 was made by the Inquiries, Complaints and Reports Committee, which included, among other things, the following requirements:
- (a) Dr. Leung is not to perform hemorrhoid procedures;
 - (b) Dr. Leung is to post a sign in his office indicating that Dr. Leung must not perform hemorrhoid procedures;
 - (c) Dr. Leung is not to engage in any professional encounters except in the presence of a Practice Monitor;
 - (d) Dr. Leung is to post a sign in his office indicating that Dr. Leung must not have any professional encounters with any patients unless a practice monitor is present and that Dr. Leung must not be alone with any patients in any examination or consultation room;
 - (e) Dr. Leung is to notify patients of the details of the restriction to practice unless a Practice Monitor is present;
 - (f) Dr. Leung is to maintain a log of all intimate examinations conducted and the indication for the examination and ensure his Practice Monitor verifies the accuracy;
 - (g) Dr. Leung is to practice under the guidance of a clinical supervisor; and
 - (h) Dr. Leung is to consent and submit to monitoring by the College.

A copy of the Interim Order is attached at Tab 5 [to the Agreed Statement of Facts and Admissions].

16. Dr. Leung billed for all of the services at issue.

Compliance and Monitoring

17. In accordance with the Interim Order, Compliance Monitoring and Supervision conducted an unannounced compliance visit to Dr. Leung's office on March 1, 2017. It was observed that the Practice Monitor did not have her own username for the electronic medical records (EMR) system and was signing off patient encounter notes under Dr. Leung's username. Dr. Leung was informed that the Practice Monitor should have her own username and Dr. Leung contacted the EMR vendor to make arrangements.
18. On March 8, 2017, the Practice Monitor informed the College that Dr. Leung had provided her with her own username.
19. Once Dr. Leung was informed that he must provide the Practice Monitor with her own password that is unknown to other clinic users, he contacted the EMR vendor to make arrangements. Dr. Leung provided the Practice Monitor with her own password by March 23, 2017.
20. On March 29, 2017, the College received a document from the Practice Monitor that Dr. Leung had given the Practice Monitor. A copy of that document is attached at Tab 6 [to the Agreed Statement of Facts and Admissions].
21. On May 2, 2017, the following additional allegation was referred to the Discipline Committee: Dr. Leung also engaged in disgraceful, dishonourable or unprofessional conduct in his conduct in implementing the College's s. 37 Order, including in his dealings with his practice monitor and patients.

B. ADMISSIONS

22. Dr. Leung admits the facts above and admits that the above conduct constitutes professional misconduct in that he failed to maintain the standard of practice of the profession contrary to paragraph 1(1)2 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991 ("O. Reg. 856/93") and that he engaged in act or omission relevant to

the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable, or unprofessional, contrary to paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act*, 1991.

FINDING

The Committee accepted as correct all of the facts set out in the Agreed Statement of Facts and Admissions. Having regard to these facts, the Committee found that Dr. Leung committed an act of professional misconduct, in that he has failed to maintain the standard of practice of the profession, and 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.

AGREED STATEMENT OF FACTS REGARDING PENALTY

The following facts were set out in an Agreed Statement of Facts Re: Penalty, which was filed as an exhibit and presented to the Committee:

1. Dr. Leung has not had any prior allegations referred to the Discipline Committee or findings made against him.
2. Dr. Leung has had a Practice Monitor present for every patient encounter since February 10, 2017. Since the Interim Order has been in place, Dr. Leung has had to arrange for 5 different Practice Monitors acceptable to the College. He has had up to four Practice Monitors at one time in order to have adequate coverage but currently only has two Practice Monitors because of Practice Monitors leaving for other positions. Dr. Leung has paid all of the costs associated with the practice monitoring. To date, the costs of practice monitoring are approximately \$29,500.

PENALTY AND REASONS FOR PENALTY

Counsel for the College and Counsel for the member made a joint submission as to an

appropriate penalty and costs order. The Committee is aware that a joint submission on penalty should be accepted, unless the proposed penalty would bring the administration of justice into disrepute, or is otherwise not in the public interest (*R v. Anthony-Cook*, 2016 SCC 43).

The Committee is also aware of the accepted principles that guide the determination of an appropriate penalty. First and foremost is protection of the public. The penalty should also serve as specific deterrence to the member and as general deterrence to the profession. In addition, the penalty should reflect the Committee's disapproval of the physician's conduct and maintain public confidence in the profession and the College's ability to regulate the profession in the public interest. Rehabilitation of the member should also be considered where appropriate.

The Committee assessed the proposed penalty based on the practice deficiencies identified by Dr. Leventis, and Dr. Leung's compliance with the Interim Order issued by the Inquiries, Complaints and Reports Committee of the College on February 10, 2017 (the "ICRC Order").

Practice Deficiencies

Dr. Leventis' report highlights consistent problems in Dr. Leung's record-keeping, a lack of informed patient consent for examinations and procedures of sensitive body areas, and completion of procedures (hemorrhoid treatment) which were not indicated. The College obtained reports of Dr. Leung's medical practice deficiencies from two separate sources: the mandatory report submitted by another physician and the patient complaint. The Committee noted the significance of these two independent reports, in that they come from both the perspective of a physician and of a patient.

Upon review of Dr. Leung's charts of twenty (20) patients, Dr. Leventis concluded that inadequate patient charting was almost universal. Maintaining adequate patient records optimizes patient care. Patient records serve as an important resource for the attending clinician to review the care provided and plan subsequent care. Without this record, or if this record falls below the standard of practice, patient care is compromised. Thus, a physician must endeavor to maintain an up-to-date, clear and legible clinical record at all times.

Because of Dr. Leung's inadequate patient charting, the rationale for some of his hemorrhoid

procedures could not be determined by Dr. Leventis. Dr. Leventis' opinion was that there was a lack of informed consent to perform intimate exams and hemorrhoid treatments. Further, multiple rectal area exams and hemorrhoid treatments did not have clear medical indications. The Committee concluded that Dr. Leung failed to maintain the standard of practice of the profession in his treatment of patients.

Compliance with the ICRC Order

Dr. Leung's practice has been subject to the ICRC Order which placed restrictions on the medical procedures he could complete, put in place a requirement for a practice monitor and a supervisor, and required logging patient encounters and notifications to patients of practice restrictions.

Following an unannounced compliance visit from the College on March 1, 2017, a deficiency was found in Dr. Leung's adherence to the ICRC Order, in that Dr. Leung had failed to provide the Practice Monitor with her own username for the EMR system and the Practice Monitor was signing off patient encounter notes under Dr. Leung's username.

The Committee was concerned that Dr. Leung did not scrupulously adhere to the ICRC Order. Based on Dr. Leventis' review, Dr. Leung should have been aware that there were specific areas of his practice in which he failed to maintain the standard of practice of the profession. The ICRC Order dated February 10, 2017 was very clear in setting the expectations that were placed upon Dr. Leung regarding his medical practice.

A members' lack of adherence to an ICRC Order is very serious. Committee orders are not subject to modification by the physician. They represent a thoughtful objective assessment of the physician's practice and an expectation that the physician's practice will be up to the standard of the profession, so that the public is protected.

Further, it is clear to the Committee, based on the document dated March 29, 2017 authored by Dr. Leung and submitted to the College by the Practice Monitor, that Dr. Leung had difficulty accepting the rationale behind the Order. The Committee viewed the document dated March 29, 2017 as a dishonourable display of factual inaccuracies and disrespect for the process by which

the practice restrictions were ordered. The Committee further noted, based on the document, that Dr. Leung did not have insight into his practice deficiencies.

Dr. Leung's comments to the Practice Monitor demonstrated to the Committee that Dr. Leung had a significant level of dissatisfaction with the College's intervention. Dr. Leung's disclosure to the Practice Monitor of his opinions and conclusions demonstrated to the Committee a lack of acceptance and understanding of the measures implemented by the ICRC.

The terms, conditions and limitations imposed by the ICRC are intended as rehabilitative, not punitive. It appears to the Committee that Dr. Leung saw the terms, conditions and limitations imposed by the ICRC Order as being more punitive than rehabilitative. If a physician is unable to accept the recommendations of their regulator, this raises the question of the physician's governability. Terms, conditions and limitations placed on the physician's certificate of registration are likely to be unsuccessful if the physician cannot accept the direction given by their regulatory body.

Previous cases

In support of the proposed penalty, College counsel relied on a number of prior cases. Although no two cases are identical, the Committee was satisfied that the penalty order proposed by the parties was consistent with orders imposed in similar cases, such as *CPSO v. Fenton* (2017), *CPSO v. Veenstra* (2012), and *CPSO v. Wojcicki* (2016), all of which required the member to be supervised in his practice after a finding was made of failure to maintain the standard of practice of the profession.

Conclusion

The Committee finds that the proposed penalty in this case satisfies the recognized penalty principles, including protecting the public and regulating the profession in the public interest.

The Committee accepts that a two-month suspension of Dr. Leung's certificate of registration and a reprimand speak to the seriousness of Dr. Leung's professional misconduct, and should

serve the goals of general and specific deterrence.

The penalty also includes rehabilitative measures, including the requirement that Dr. Leung complete a record-keeping course and sensitivity training to address his lack of sensitivity regarding intimate examinations of patients.

The requirement for close monitoring of Dr. Leung's practice, both by a practice monitor and ongoing supervision is appropriate to ensure protection of the public and to ensure that rehabilitation has been successful. The Committee finds that these ongoing practice restrictions and monitoring are essential, given the clinical deficiencies in Dr. Leung's practice identified by Dr. Leventis and the challenges Dr. Leung has had in implementing the interim order of the ICRC.

The Committee is of the view that ongoing practice monitoring with defined points of review should assist with Dr. Leung's rehabilitation.

The Committee agrees that it is appropriate to require that Dr. Leung pay costs of a one-day hearing to the College in the amount of \$5,500.00, as agreed upon by the parties.

ORDER

The Committee stated its finding of professional misconduct in paragraphs 1 and 2 of its written order of December 11, 2017. In that order, the Committee ordered and directed on the matter of penalty and costs that:

3. the Registrar suspend Dr. Leung's Certificate of Registration for a two-month period commencing December 18, 2017.
4. Dr. Leung appear before the panel to be reprimanded.

5. the Registrar impose the following terms, conditions and limitations on Dr. Leung's Certificate of Registration:

a) Practice Restriction

- (i) Dr. Leung shall not perform hemorrhoid procedures.

Posting a Sign (Practice Restriction)

- (ii) Dr. Leung shall post a sign in the waiting room(s) of all his Practice Locations, in a clearly visible and secure location, in the form set out at Appendix "A." For further clarity, this sign shall state as follows: "Dr. Leung must not perform hemorrhoid procedures. Further information may be found on the College of Physicians and Surgeons of Ontario website at www.cpsso.on.ca".
- (iii) Dr. Leung shall post a certified translation(s) in any language(s) in which he provides services, of the sign described above in the waiting room(s) of all his Practice Locations, in a clearly visible and secure location, in the form set out at Appendix "A."
- (iv) Dr. Leung shall provide the certified translation(s) to the College within thirty (30) days of the date of this Order.
- (v) If Dr. Leung elects, after the date of this Order, to provide services in any other language(s), he will notify the College prior to providing any such services.
- (vi) Dr. Leung shall provide to the College the certified translation(s) prior to beginning to provide services in the language(s) described in (v) above.

b) Practice Monitor and Patient Log

- (i) Dr. Leung shall not engage in any professional encounters of any kind (the "Patient Encounter") with patients, unless the Patient Encounter takes place in the continuous presence of and under the continuous observation of a monitor who is a regulated health professional acceptable to the College (the "Practice Monitor").
- (ii) At all times, Dr. Leung shall ensure that the Practice Monitor shall:
- (a) Provide reports (as described in the Practice Monitor's undertaking) to the College on a monthly basis;

- (b) Remain present at all times during all Patient Encounters, even if another person is accompanying the patient, and carefully observing all of Dr. Leung's Patient Encounters including, but not limited to, physical examinations. It is Dr. Leung's obligation to ensure that the Practice Monitor's view of his examinations is unobstructed at all times;
 - (c) Refrain from performing other functions, except those required in the Practice Monitor's undertaking attached as Appendix "B", while observing all Patient Encounters;
 - (d) Maintain a log of all Patient Encounters in the form attached as Appendix "C" (the "Log");
 - (e) Initial all corresponding entries in the records of patients noted in the Log; and
 - (f) Submit the original Log to the College on a monthly basis.
- (iii) Dr. Leung shall maintain a copy of the Log at all times, and shall make it available to the College upon request.

Posting a Sign (Practice Monitor)

- (iv) Dr. Leung shall post a sign in his waiting room(s) and each of his examination and/or consulting rooms, in all of his Practice Locations, in a clearly visible and secure location, in the form attached hereto as Appendix "D" that states: "Dr. Kelvin Wing-Ming Leung must not have any professional encounters with any patients unless under the continuous observation of a practice monitor acceptable to the College of Physicians and Surgeons of Ontario. Further information may be found on the College website at www.cpsso.on.ca."
- (v) Dr. Leung shall post a certified translation(s) in any language(s) in which he provides services, of the sign described in (xi) above, in his waiting room(s) and each of his examination and/or consulting rooms, in all of his Practice Locations, in a clearly visible and secure location.
- (vi) Dr. Leung shall provide the certified translation(s) described in (xii) above to the College within 30 days of the date of this Order.

Notifying Patients

- (vii) Dr. Leung is to directly notify each patient scheduled for an appointment with him, prior to the appointment, and at least within seven (7) days after the appointment is booked, of the details of the restriction described in section b(i) above or section d(ii) below.

c) Clinical Supervision: Indication for Intimate Examinations

Intimate Examination Log

- (i) Dr. Leung shall maintain an up-to-date daily log listing every patient seen by him in his family practice, including the patient's name, date of birth, OHIP number, date of appointment or visit, reason for visit, any intimate examination(s) conducted and the indication for the examination in the form attached as Appendix "E" (the "Intimate Examination Log").
- (ii) Dr. Leung shall ensure that his Practice Monitor verifies the accuracy of each entry and initials the Intimate Examination Log after every patient encounter.

Supervision

- (iii) For a period of six months from the date of resumption of practice following suspension, Dr. Leung shall practise under the guidance of a clinical supervisor(s) acceptable to the College in respect of the indication for intimate examinations in his family medicine practice (the "Clinical Supervisor(s)"), at his own expense.
- (iv) Dr. Leung shall meet with the Clinical Supervisor(s) once every two weeks, which shall consist of the Clinical Supervisor reviewing Dr. Leung's Intimate Examination Log, with reports to be provided to the College at least monthly by the Clinical Supervisor(s). The Clinical Supervisor shall examine the relevant patient charts if and when there is concern about the indication of any intimate examination conducted.
- (v) Dr. Leung shall provide his Clinical Supervisor(s) with full access to his OHIP billings, his appointment scheduling book/program, and the Intimate Examination

Log. He shall maintain the original Intimate Examination Log and shall send a copy to the College at the end of every calendar month.

- (vi) Dr. Leung shall ensure that the undertaking of the Clinical Supervisor(s) attached at Appendix “F” to this Order is delivered to the College within ten (10) days of the date of this Order. If Dr. Leung has not delivered the Clinical Supervisor(s)’ undertaking to the College by that date, Dr. Leung shall cease to practise family medicine until delivery of the undertaking, and the fact that he has done so will constitute a term, condition or limitation on his certificate of registration.
- (vii) Dr. Leung shall fully cooperate with the clinical supervision of his family medicine practice, and shall abide by any recommendations of his Clinical Supervisor(s).
- (viii) If a Clinical Supervisor(s) who has given an undertaking in Appendix “F” to this Order is unable or unwilling to continue to fulfil its terms, Dr. Leung shall, within ten (10) days of receiving notice of same, obtain an executed undertaking in the same form from a similarly qualified person who is acceptable to the College and ensure that it is delivered to the College within that time.
- (ix) If Dr. Leung is unable to obtain a Clinical Supervisor in accordance with this Order, he shall cease practising family medicine immediately until such time as he has done so, and the fact that he has done so will constitute a term, condition or limitation on his certificate of registration until that time.

d) Reassessments

Six Month Reassessment

- i) At six (6) months following from the date of resumption of practice following suspension, Dr. Leung shall submit to an assessment of his practice by an assessor or assessors selected by the College (the “Assessment”). The Assessment may include chart reviews, direct observation of Dr. Leung’s care, interviews with colleagues and co-workers, feedback from patients and any other tools deemed necessary by the College. Dr. Leung shall abide by all recommendations made by the assessor(s), and the results of the Assessment will be reported to the College and may form the basis of further action by the College;

- ii) In the event the reassessment is positive, the practice restriction set out at b(vii) above can be varied to: Dr. Leung shall not engage in any breast, pelvic, genital, urinary, perineal, perianal and rectal examinations of patients, unless the examination takes place in the continuous presence of and under the continuous observation of a monitor who is a regulated health professional acceptable to the College (the “Practice Monitor”).
- iii) If and when the role of the practice monitor is reduced, Dr. Leung shall post a sign in his waiting room(s) and each of his examination and/or consulting rooms, in all of his Practice Locations, in a clearly visible and secure location, in the form attached hereto as Appendix “G” that states: “Dr. Kelvin Wing-Ming Leung must not conduct breast, genital, urinary, or rectal examinations except under the continuous observation of a practice monitor acceptable to the College of Physicians and Surgeons of Ontario. Further information may be found on the College website at www.cpsso.on.ca.”
- iv) The Undertaking of the Practice Monitor is attached at Appendix “H” to this Order.

Eighteen Month Reassessment

- v) At eighteen (18) months following from the date of resumption of practice following suspension, Dr. Leung shall submit to a further assessment of his practice by an assessor or assessors selected by the College (the “Assessment”). The Assessment may include chart reviews, direct observation of Dr. Leung’s care, interviews with colleagues and co-workers, feedback from patients and any other tools deemed necessary by the College. Dr. Leung shall abide by all recommendations made by the assessor(s), and the results of the Assessment will be reported to the College and may form the basis of further action by the College;
- vi) In the event the reassessment is positive, Dr. Leung will no longer be required to conduct breast, pelvic, genital, urinary, perineal, perianal and rectal examinations in the presence of a practice monitor.

e) Education

- i) Dr. Leung will successfully complete, within six months of the date of this Order, a one on one educational session to address the sensitivity of patients with regards to intimate examinations.
- ii) Dr. Leung will successfully complete instruction in medical record keeping within six months of the date of this Order.

f) Costs

- i) Dr. Leung shall be responsible for any and all costs associated with implementing the terms of this Order.

g) Monitoring

- (i) Dr. Leung shall inform the College of each and every location that he practises or has privileges including, but not limited to, hospital(s), clinic(s) and office(s), in any jurisdiction (collectively the “Practice Location(s)”), within five (5) days of this Order. Going forward, he shall inform the College of any and all new Practice Locations within five (5) days of commencing practice at that location.
- (ii) Dr. Leung shall consent to the College to make appropriate enquiries of the Ontario Health Insurance Plan and/or any person or institution who may have relevant information in order for the College to monitor Dr. Leung’s compliance with the terms of this Order and shall promptly sign such consents as may be necessary for the College to obtain information from these persons or institutions;
- (iii) Dr. Leung shall submit to, and not interfere with, unannounced inspections of his Practice Locations and to inspections of patient charts by the College and to any other activity the College deems necessary in order to monitor Dr. Leung’s compliance with the terms of this Order;
- (iv) Dr. Leung shall consent to the College providing any and all information to the Practice Monitor and Clinical Supervisor that the College deems necessary or desirable in order to assist the Practice Monitor and Clinical Supervisor in fulfilling

their Undertakings and in order to monitor Dr. Leung's compliance with the terms of this Order;

- (v) Dr. Leung shall consent to all Practice Monitors and Clinical Supervisor to disclose to the College, and to one another, any information relevant to this Order, relevant to the terms of the Practice Monitor's or Clinical Supervisor's Undertaking and/or relevant for the purposes of monitoring Dr. Leung's compliance with this Order; and
- (vi) Dr. Leung shall consent to the College providing the Order to any Chief(s) of Staff, or a colleague with similar responsibilities, at any Practice Location where he practises or has privileges ("Chief(s) of Staff"), and to provide said Chief(s) of Staff with any information the College has that led to this Order and/or any information arising from the monitoring of his compliance with this Order.

6. Dr. Leung pay costs to the College in the amount of \$5,500.00 within thirty (30) days of the date of this Order.

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

TEXT of PUBLIC REPRIMAND
Delivered December 11, 2017
in the case of the
COLLEGE OF PHYSICIANS and SURGEONS of ONTARIO
and
DR. KELVIN WING-MING LEUNG

Dr. Leung, this Committee is disappointed at your professional misconduct, because it demeans not only you personally, but also reflects poorly on the entire medical profession. The public, who we as physicians serve, expects all physicians to practise with up-to-date knowledge and to maintain the professional judgment that is the foundation for all that we do to help our patients.

Medical record keeping, including the proper documentation of consent, is a vital component of our professional responsibility. Sensitivity regarding the conduct of intimate examinations is a component of the compassion that our patients expect.

When the College has to intervene to protect the public, it is expected that every aspect of an Order will be adhered to scrupulously. Every sentence is important. Any failings to adhere to an Order must be regarded as a serious lack of professionalism.

The Committee views your document communication with your practice monitor to be a dishonourable display of inaccuracies and disrespect for your regulator. Your journey toward rehabilitation must recognize the role of regulation in the public interest, as well as enhance your knowledge in the areas of your deficiency.

Dr. Leung, this Committee expects your full attention to the Order. We expect that you will finish your career without another appearance before the Discipline Committee.

This is not an official transcript