

## NOTICE OF PUBLICATION BAN

In the College of Physicians and Surgeons of Ontario and Dr. Kim Choy Lui, this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity and any information that could disclose the identity of the patient to whom the allegations relate under subsection 45(3) of the Health Professions Procedural Code (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended.

Subsection 93(1) of the Code, which is concerned with failure to comply with these orders, reads:

Every person who contravenes an order made under ... section 45 or 47... is guilty of an offence and on conviction is liable,

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

**Indexed as: Lui, K.C. (Re)**

**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. KIM CHOY LUI**

**PANEL MEMBERS:**

**DR. M. DAVIE (CHAIR)  
D. DOHERTY  
DR. J. WATTS  
DR. E. ATTIA (Ph.D.)  
DR. C. CLAPPERTON**

<b>Hearing Date:</b>	December 19, 2011
<b>Decision Date:</b>	December 19, 2011
<b>Release of Written Reasons:</b>	January 16, 2012

**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 19, 2011. At the conclusion of the hearing, the Committee stated its finding that the member committed an act of professional misconduct and delivered its penalty and costs order, with written reasons to follow.

### **THE ALLEGATIONS**

The Notice of Hearing alleged that Dr. Kim Choy Lui committed an act of professional misconduct:

1. under clause 51(1)(b.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, 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, 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 THE ALLEGATIONS**

Dr. Lui did not contest the allegation in the Notice of Hearing that he committed an act of professional misconduct, in that he engaged in the sexual abuse of a patient, and in that he 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 FACTS**

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

**FACTS**

1. Dr. Kim Choy Lui ("Dr. Lui") was born in 1963 and practises family medicine in Markham.
2. Patient A had been a patient of Dr. Lui since approximately 1999, when she was in her early teens. In January 2010, she attended Dr. Lui's office for her annual physical examination.
3. During the course of the gynaecological portion of the examination, Patient A lay on the examination table with her feet in stirrups, having disrobed and put on a gown.
4. Partway through the gynaecological portion of the examination, Dr. Lui began to move his fingers in and out of Patient A's vagina in a manner that was sexual in nature.
5. After Dr. Lui removed his fingers from Patient A's vagina, he asked her if she thought she had contracted herpes as a result of her boyfriend giving her oral sex. Dr. Lui then asked, "Like this?" At that point he began to lick Patient A's genital area, including her clitoris.
6. Patient A was shocked and sat up suddenly on the examination table. Dr. Lui apologized and stated that he had been under stress. Dr. Lui left the examination room while Patient A dressed.
7. When Dr. Lui returned to the examination room, he and Patient A discussed what had occurred, and she expressed how upset and angry she was. Dr. Lui disclosed personal details regarding what he said were problems in his marriage. In doing so, he showed Patient A a letter from a psychologist, dated February 2007, regarding the psychologist's treatment of Dr. Lui, including his personal history and issues with his marriage. Before she left, Dr. Lui wrote down his cell phone number for Patient A.
8. Dr. Lui called Patient A on her cell phone and spoke with her shortly after the January 2010 appointment. At his request, she also met with him once for coffee. During these conversations, which were initiated by Dr. Lui, he continued to disclose personal details to Patient A regarding problems which he said he was experiencing, including with

his marriage. He also asked Patient A to wait before submitting a complaint to the College, stating that he needed time to prepare. After Patient A submitted a complaint to the College regarding Dr. Lui's behaviour, he stopped contacting her.

### **PLEA OF NO CONTEST**

9. Dr. Lui does not contest the facts set out above, and does not contest that the conduct described in paragraphs 1 to 8 above was disgraceful, dishonourable, and unprofessional, and was sexual abuse of a patient, thereby constituting professional misconduct.

### **FINDING**

The Committee accepted as true all of the facts set out in the Statement of Uncontested Facts. Having regard to these facts, the Committee found that Dr. Lui committed an act of professional misconduct, in that he engaged in the sexual abuse of a patient, 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.

### **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.

A Victim Impact Statement was also presented that highlighted the emotional trauma suffered by the young patient to whom the allegations pertained. She had been a long-term patient of Dr. Lui since the age of thirteen. She suffered shock following the incident and reported it when she started to have panic attacks. She feels angry at how Dr. Lui manipulated her and made himself out to be a victim. She expressed her relief for being spared the trauma of testifying in a hearing. The Committee noted that she has been able to get over her initial fears in seeing a new doctor.

The Committee acknowledges that a joint submission must be accepted unless to do so

would be contrary to the public interest and bring the administration of justice into disrepute.

In looking at the aggravating factors in this case, the Committee noted that Dr. Lui's sexual abuse of a young woman followed on a long history of her being his patient. She was no doubt very trusting of him and he violated that trust in the most abhorrent way. Subsequently, he contacted the patient and tried to manipulate her with his explanations of the stress he was feeling at the time. In doing so, he further victimized her.

The Committee considered the mitigating factor that Dr. Lui has not had any findings against him of improper conduct in the past.

With the penalty principles in mind, the Committee accepted the joint submission on penalty. Revoking Dr. Lui's certificate of registration will protect the public and ensure that the integrity of the profession is maintained. Sexual abuse of a patient is one of the most serious offences, and this is reflected in the legislation with mandatory revocation being the consequence. Revocation will remind the profession of the penalty for this type of conduct and serves as a general deterrent.

As an expression of the profession's abhorrence for this conduct, a reprimand was also ordered. Recording the order on the register will enhance the public nature of these proceedings and the premier goal of the College in protecting the public and maintaining the integrity of the profession. Rehabilitation is also a principle guiding the penalty order. The penalty serves as an opportunity for Dr. Lui to tend to his rehabilitation in a thoughtful, meaningful way.

There was also an order to reimburse the College for funding the therapy the patient may need as a result of the doctor's actions and an order to provide security for such funding. The Committee sees this as necessary in order to mitigate the harm caused by the doctor. In addition, the Committee finds that payment to the College of costs for a one-day hearing is also appropriate.

**ORDER**

Therefore, the Committee ordered and directed that:

1. the Registrar revoke Dr. Lui's certificate of registration, effective at 11:59 p.m. on December 19, 2011.
2. Dr. Lui appear before the panel to be reprimanded.
3. Dr. Lui reimburse the College for funding provided to patients under the program required under section 85.7 of the Code, by posting an irrevocable letter of credit or other security acceptable to the College by January 19, 2011, in the amount of \$16,060.00.
4. Dr. Lui shall within 30 days pay the College its costs of this proceeding in the amount of \$3,650.00.
5. the results of this proceeding be included in the register.

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