

Indexed as: Auyeung (Re)

**THE DISCIPLINE COMMITTEE OF THE COLLEGE
OF PHYSICIANS AND SURGEONS OF ONTARIO**

IN THE MATTER OF a Hearing directed
by the Complaints Committee of
the College of Physicians and Surgeons of Ontario
pursuant to Section 26(2) of the *Health Professions Procedural Code*,
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. ANTHONY AUYEUNG

PANEL MEMBERS: **DR. W. KING (CHAIR)**
 E. COLLINS
 DR. K. BRACKEN
 J. DHAWAN

Hearing Date: June 26, 2006
Decision Date: June 26, 2006
Release of Written Reasons Date: August 10, 2006

DECISION AND REASONS FOR DECISION

The Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) heard this matter at Toronto on June 26, 2006. At the conclusion of the hearing, the Committee stated its finding that Dr. Auyeung committed an act of professional misconduct and delivered its penalty order in writing with written reasons to follow.

ALLEGATION

The Notice of Hearing alleged that Dr. Auyeung committed an act of professional misconduct under paragraph 1(1)33 of Ontario Regulation 856/93 made under the *Medicine Act, 1991* [S.O. 1991, c. 30], (“O.Reg 856/93”), in that he has engaged in conduct or an act or acts relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

RESPONSE TO ALLEGATION

Dr. Auyeung was not in attendance at the hearing. Dr. Auyeung, through his legal counsel, admitted to the allegation of professional misconduct as set out in the Notice of Hearing.

EVIDENCE

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

1. Dr. Auyeung is a fertility specialist practising at a private fertility clinic in Ontario.
2. In about November, 2000, Ms X was hired as Dr. Auyeung’s part-time receptionist and office assistant.

3. In about the summer of 2001, Dr. Auyeung and Ms X began a sexual relationship.
4. In August, 2002, Dr. Auyeung had Ms X sign an employee confidentiality agreement, a copy of which is attached [to the Statement of Agreed Facts] at Tab A.
5. After the sexual relationship terminated, Ms X became an anonymous ovum donor in Dr. Auyeung's practice. Ms X made two anonymous ovum donations, one in December, 2002 and one in May, 2003. On at least one of these occasions, Dr. Auyeung picked Ms X up at her home and drove her to the donor facility.
6. Dr. Auyeung told all anonymous donors and recipients that they would not know the identity of their matching donor and recipient. All anonymous donors and recipients were required to sign consent and release forms and an Anonymous Ovum Donation Agreement. Copies of these documents, with the donor's name and signature removed, are attached [to the Statement of Agreed Facts] at Tab B. Dr. Auyeung took insufficient steps to conceal the identity of the patient who received Ms X's donation. As a result, through her position at the clinic, Ms X had access to the recipients' files and claims that she knows the identity of at least one of the recipients of her ova.
7. Ms X resigned from her employment with Dr. Auyeung's clinic in August, 2003.

FINDING

The Committee accepted as true all of the facts set out in the Statement of Agreed Facts. Having regard to these facts, the Committee accepted Dr. Auyeung's admission and found that he committed an act of professional misconduct under paragraph 1(1)33 of O. Reg. 856/93 in that he engaged in 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 Dr. Auyeung made a joint submission as to an appropriate order for penalty and costs. A draft order was presented to the Committee which provided for: a suspension of Dr. Auyeung's certificate of registration for a period of three months, one month of which would be suspended upon Dr. Auyeung's successful completion of the College's Boundaries Course and the College's Medical Ethics Course; costs in the amount of \$2,500.00 payable to the College; and inclusion of the results of the proceeding in the register of the College.

In considering the joint submission, the Committee carefully reviewed the submissions of both counsel and the aggravating and mitigating factors presented. The Committee also considered the case of the *College of Physicians and Surgeons of Ontario v. Caro*, (introduced as a precedent), which attracted a similar penalty to the penalty jointly proposed.

In support of the order proposed by way of joint submission, counsel for the College submitted that Dr. Auyeung's boundary violations placed both his employee, Ms X, and his anonymous patient at risk and created the appearance of a lack of neutrality which reflects badly, not only on Dr. Auyeung, but on the profession as a whole. Ms X's claim that she knows the identity of at least one recipient of her donated ova, constitutes a violation of the anonymity guaranteed to the patient.

In mitigation, Dr. Auyeung's counsel submitted that by admitting the allegation, Dr. Auyeung had shown remorse and had saved the College the expense of a protracted hearing. In addition, Dr. Auyeung's counsel submitted that Dr. Auyeung had never denied the facts of the matter, had cooperated fully with the College investigation and had provided full access to his clinic and to his employees. Dr. Auyeung's counsel also indicated that Dr. Auyeung's lack of any previous discipline history with the College is a factor the Committee should consider.

The Committee considered that the imposition of a substantial period of suspension would serve to deter Dr. Auyeung in the event he should ever consider similar misconduct, while at the same time sending a message to the profession that such boundary violations will not be tolerated. The addition of the educational component will assist Dr. Auyeung in fully understanding the ethical problems inherent in boundary violations and the strategies to avoid recurrence. The proposed costs of \$2,500.00 were felt to be appropriate in view of Dr. Auyeung's cooperation with the College's investigation process and the limitation of the hearing to a single day.

The Committee therefore accepted the jointly submitted penalty to be appropriate and made the following Order:

ORDER

The Discipline Committee ordered and directed that:

1. the Registrar suspend Dr. Auyeung's certificate of registration for a period of three (3) months, one (1) month of which shall be suspended if Dr. Auyeung successfully completes, at his own expense, the College's Boundaries Course and the College's Medical Ethics Course and provides proof thereof to the College. The commencement date for the suspension is July 1, 2006;
2. Dr. Auyeung pay the College costs in the amount of \$2,500.00; and
3. the results of this proceeding be included in the register.