

香港醫務委員會
The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LUI Kim Choy (雷劍財醫生) (Reg. No.: M06982)
Date of hearing: 7 December 2015

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS (Chairman)
Dr CHEUNG Tak-hong
Dr HUNG Se-fong, BBS
Mr YU Kwok-kuen, Harry
Dr KHOO Lai-san, Jennifer
Mr POON Yiu-kin, Samuel

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: No

Senior Government Counsel representing the Secretary: Miss Carmen POON

1. The charges against the Defendant, Dr LUI Kim Choy, are:

“That in or about 2011, he, being a registered medical practitioner:

- (1) was found to have committed an act of professional misconduct by the Discipline Committee of the College of Physicians and Surgeons of Ontario on 19 December 2011:
 - (a) 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, in that he engaged in the sexual abuse of a patient; and
 - (b) under paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991 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;

- (2) failed to report to the Medical Council that he had been the subject of adverse findings in disciplinary proceedings by other professional regulatory bodies within 28 days from the adverse disciplinary finding, contrary to Part II of the Code of Professional Conduct published in January 2009.

In relation to the facts alleged, he has been guilty of misconduct in a professional respect.”

Facts of the case

2. The Defendant decided on his own volition not to be present either by himself or by his legal representative and to contest the disciplinary charges here despite he has been duly served with the Notice of Inquiry dated 3 March 2015.
3. The Defendant was at all material times a registered medical practitioner. His name has been included in the General Register from 10 August 1988 to present and his name has never been included in the Specialist Register.
4. According to the written decision of the Discipline Committee of the College of Physicians and Surgeons of Ontario (the “Committee”) dated 16 January 2012 (the “Decision”), the Defendant was found to have committed an act of professional misconduct under:
 - (a) 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, in that he engaged in the sexual abuse of a patient; and
 - (b) paragraph 1(1)33 of Ontario Regulation 856/93 made under the Medicine Act, 1991 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.
5. The Committee also accepted as true the following uncontested facts of the case against the Defendant:
 - (1) The Defendant practised family medicine in Markham, Ontario, Canada.
 - (2) Patient A had been a patient of the Defendant since approximately 1999, when she was in her early teens. In January 2010, she attended the Defendant’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, the Defendant began to move his fingers in and out of Patient A's vagina in a manner that was sexual in nature.
 - (5) After the Defendant moved 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. The Defendant 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. The Defendant apologized and stated that he had been under stress. The Defendant left the examination room while Patient A dressed.
 - (7) When the Defendant returned to the examination room, he and Patient A discussed what had occurred, and she expressed how upset and angry she was. The Defendant 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 him, including his personal history and issues with his marriage. Before she left, the Defendant wrote down his cell phone number for Patient A.
 - (8) The Defendant 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 the Defendant, 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 his behavior, the Defendant stopped contacting her.
6. The Medical Council first came to know of the aforesaid Decision of the Committee when it received information by e-mail from an anonymous complainant on 1 February 2014.

Burden and Standard of Proof

7. We bear in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove his innocence. We also bear in mind that the standard of proof for disciplinary proceedings is the preponderance of probability.

However, the more serious the act or omission alleged, the more inherently improbable must it be regarded. Therefore, the more inherently improbable it is regarded, the more compelling the evidence is required to prove it on the balance of probabilities.

8. There is no doubt that each of the allegations made against the Defendant here are serious. We need to look at all the evidence and to consider and determine each of the charges separately.

Findings of the Council

9. Whilst section 21(1)(b) of the Medical Registration Ordinance is silent upon the matter, the Medical Council has always adopted the view that the legal provision can relate to professional misconduct committed outside Hong Kong.
10. The Defendant did not contest the factual allegations made against him at the disciplinary hearing before the Committee. We also find the same as proven against the Defendant in this case.
11. It is clear to us from reading the Decision of the Committee that the Defendant was found guilty of professional misconduct in that he engaged in the sexual abuse of a young female patient under circumstances that were, in our view, not only unprofessional but also disgraceful and dishonourable.
12. We therefore find the Defendant guilty of professional misconduct under charges (1)(a) and (b).
13. There is no dispute that the Defendant failed to report to the Medical Council that he had been the subject of adverse findings in disciplinary proceedings by the Committee within 28 days after the Decision, contrary to paragraph 29.1 of Part II of the Code of Professional Conduct published in January 2009. Failure to report within the specified time by itself is a ground for disciplinary action.
14. For these reasons, we also find the Defendant guilty of professional misconduct under charge 2.

Sentencing

15. The Defendant has a clear record.
16. In accordance with our published policy, we shall give him full credit for not contesting the disciplinary charges laid against him in this case.
17. Sexual abuse by a doctor of his patient in the course of medical consultation is a

very serious matter. This is because the public relies on doctors a high degree of trust and we must not allow that trust to be abused. In this connection, we noted and agreed with the Committee's observation 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."

18. The Defendant did not advance any mitigation plea for our consideration. Apart from expressing his deep apology for what had happened, all that we knew from reading the Defendant's correspondence with the Secretary was that he had been treated and followed up by his family doctor and psychiatrist in Canada regularly since the Decision of the Committee. We have no idea what sort of psychiatric illness(es) the Defendant has had and how they would relate to the sexual abuse of Patient A.
19. However, we must bear in mind our primary duty is to protect the public from persons who are not fit to practise medicine. Judging from what the Defendant had done to Patient A, we are firmly of the view that either for the protection of the public or for his own best interest, the Defendant should not be allowed to practise medicine in Hong Kong until after he has fully recovered from his psychiatric illness(es) and is able to provide the Medical Council with cogent evidence of his suitability for reinclusion in the General Register.
20. We therefore order in respect of charges (1)(a) and (b) that the Defendant's name be removed from the General Register permanently. We also order that the removal shall take effect immediately upon its publication in the Gazette.
21. We further order in respect of charge (2) that a warning letter be issued to the Defendant and the order shall be published in the Gazette.

Prof. LAU Wan Yee Joseph, SBS
Chairman, Medical Council