

Conciliation Case

Newsletter Sep 2002 Issue No. 23

Just a Regular Check-up?

THE COMPLAINT

Ah Fa visited a doctor, as she felt unwell. A nurse escorted her into the doctor's office, and then left her alone with the doctor. Initially, he proceeded to perform a regular check-up. He asked Ah Fa to describe her symptoms, checked her throat, then requested to examine her chest. Having had check-ups before, Ah Fa knew the routine, so she yielded to the request and unbuttoned part of her vest. However, what surprised her was the doctor's next move. He turned towards her, edging closer. Placing his stethoscope on her right breast, he repeatedly touched her breast with his fingertips. Shocked and embarrassed, Ah Fa opened her mouth, but was unable to speak as he performed the same action on the left side of her chest. She sat there, dazed and confused. When he removed his hand from her shirt, the doctor winked at Ah Fa and said to her, "You'll be fine." Ah Fa quickly buttoned up her shirt and stumbled out of the clinic.

Utterly humiliated, shaken and upset, Ah Fa returned to work and discussed with her colleagues what she could do. They told her that she had a few options * sue the doctor, complain to the medical council or contact the EOC to settle the matter by conciliation. Knowing that the advantage of conciliation is its relative speed in comparison with other forms of redress, Ah Fa decided to lodge a complaint with the EOC. Apart from being a free service, the fact that the Commission's conciliation procedures involves fewer people and therefore facilitates confidentiality also helped Ah Fa reach her decision.

WHAT THE EOC DID

Upon receipt of the complaint, the EOC contacted the doctor and carried out the investigation. The doctor insisted that he did not deliberately touch Ah Fa's breast and that what he performed was just a regular chest examination. He claimed that when working with a stethoscope, some contact with the patient's skin was unavoidable. However, he felt sorry for the misunderstanding, which had led to Ah Fa's distress, and he wanted an opportunity to clarify his intention and action with her.

The EOC arranged a conciliation meeting during which both parties agreed to resolve the complaint. Other than expressing apology in writing, the doctor agreed to pay Ah Fa an amount of money as a kind of compensation for injury to her feeling. He also promised to ensure that in future, his patients understand his intent before carrying out any physical examinations.

WHAT THE LAW SAYS

Under the Sex Discrimination Ordinance, it is unlawful for a person to sexually harass another person in the course providing goods, facilities or services. The doctor should not have conducted any unwelcome sexual behaviour which makes his patients feel offended, humiliated or intimidated, as a reasonable person would anticipate that the victims would have such negative feelings.

和解案例

通訊 2002 年 9 月 第 23 期

例行檢查？

投訴內容

阿花身體不適去看醫生。護士帶領她進醫生房後離開，留下她和醫生兩人。最初，醫生為她做例行檢查，叫她描述病徵，又為她檢查喉嚨，然後要為她檢查胸肺。鑑於以往的經驗，阿花知道檢查程序，所以一口答應要求，解開部分上衣鈕扣。不過，醫生的舉動卻令她大為震驚。他轉身面向阿花，愈挨愈近，將聽診器放在阿花的右胸，再重複用指尖觸摸她的右胸；其後醫生又對阿花的左胸重施故技，令她既驚訝且尷尬，張開口卻說不出話來。她茫然坐著，心慌意亂。醫生放開手時向阿花眨一眨眼說：「你很快會痊癒！」阿花快快扣上鈕扣，跌跌撞撞離開診所。

阿花感到受辱、震驚和不安，回到公司便跟同事商量怎麼辦。同事提議幾個方法——控告那個醫生、向醫務委員會投訴、或聯絡平等機會委員會，以調解方式解決問題。阿花考慮後覺得，調解的好處是相對上更快討回公道，而且又是免費的，所以決定向平等機會委員會投訴。事實上，委員會的調解程序所牽涉的人數較少，因而較易保密，故此令阿花作出了她的抉擇。

平機會的行動

委員會收到投訴後便接觸該名醫生和展開調查。醫生堅持沒有故意觸摸阿花的乳房，並指出當時只不過是為阿花進行例行的胸肺檢查。他聲稱，使用聽診器無可避免會接觸到病人的肌膚，不過，對於引致阿花誤會令她不安，他表示歉意，並希望有機會向阿花澄清他的意圖和舉動。

委員會安排了調解會議，會上雙方願意解決問題。該醫生除了作出書面道歉外，還向阿花作出金錢賠償，以彌補她心靈上的傷害。此外，他更保證以後為病人檢查前，會先讓他們明白自己的意思。

法理依據

根據《性別歧視條例》規定，任何人如在提供貨品、設施或服務的過程中，對他人作出性騷擾，即屬違法。該醫生不應該進行任何不受歡迎的涉及性的行為，而令他的病人感到受冒犯、侮辱或威嚇，因為任何合理的人都應預計到，有關行為會令人反感。

和解案例

通讯 2002 年 9 月 第 23 期

例行检查？

投诉内容

阿花身体不适去看医生。护士带领她进医生房后离开，留下她和医生两人。最初，医生为她做例行检查，叫她描述病征，又为她检查喉咙，然后要为她检查胸肺。鉴于以往的经验，阿花知道检查程序，所以一口答应要求，解开部分上衣钮扣。不过，医生的举动却令她大为震惊。他转身面向阿花，愈来愈近，将听诊器放在阿花的右胸，再重复用指尖触摸她的右胸；其后医生又对阿花的左胸重施故技，令她既惊讶且尴尬，张开口却说不出话来。她茫然坐着，心慌意乱。医生放开手时向阿花眨一眨眼说：「你很快会痊愈！」阿花快快扣上钮扣，跌跌撞撞离开诊所。

阿花感到受辱、震惊和不安，回到公司便跟同事商量怎么办。同事提议几个方法——控告那个医生、向医务委员会投诉、或联络平等机会委员会，以调解方式解决问题。阿花考虑后觉得，调解的好处是相对上更快讨回公道，而且又是免费的，所以决定向平等机会委员会投诉。事实上，委员会的调解程序所牵涉的人数较少，因而较易保密，故此令阿花作出了她的抉择。

平机会的行动

委员会收到投诉后便接触该名医生和展开调查。医生坚持没有故意触摸阿花的乳房，并指出当时只不过是阿花进行例行的胸肺检查。他声称，使用听诊器无可避免会接触到病人的肌肤，不过，对于引致阿花误会令她不安，他表示歉意，并希望有机会向阿花澄清他的意图和举动。

委员会安排了调解会议，会上双方愿意解决问题。该医生除了作出书面道歉外，还向阿花作出金钱赔偿，以弥补她心灵上的伤害。此外，他更保证以后为病人检查前，会先让他们明白自己的意思。

法理依据

根据《性别歧视条例》规定，任何人如在提供货品、设施或服务的过程中，对他人作出性骚扰，即属违法。该医生不应该进行任何不受欢迎的涉及性的行为，而令他的病人感到受冒犯、侮辱或威吓，因为任何合理的人都应预计到，有关行为会令人反感。