

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHAN Tsz Kiu Stewart (陳子翹醫生) (Reg. No.: M16411)

Date of hearing: 17 April 2023 (Monday) and 9 March 2024 (Saturday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr CHUNG Kin-lai
Dr CHOW Wing-sun
Mr WONG Hin-wing, Simon, MH
Ms CHOW Anna M. W.

Legal Adviser: Mr Edward SHUM

Defence Counsel representing the Defendant: Mr Kumar RAMANATHAN, SC
and Mr Eric TSOI as instructed by
Messrs. Bond NG Solicitors

Government Counsel representing the Secretary: Mr Louis POON

1. The re-amended charges against the Defendant, Dr CHAN Tsz Kiu Stewart, are:

“That, in or about October to November 2017, he, being a registered medical practitioner, without reasonable justification:

(a) placed clandestine video-recording devices in a changing room in Kwong Wah Hospital (“the Hospital”); and/or

(b) recorded individual(s) in a changing room of the Hospital, in which

*any individual can reasonably be expected to be changing clothes;
and/or*

*(c) possessed videos taken in a changing room in the Hospital by way of
clandestine video-recording devices.*

*In relation to the facts alleged, either singularly or cumulatively, he has
been guilty of misconduct in a professional respect.”*

Facts of the case

2. The name of the Defendant has been included in the General Register from 1 July 2011 to the present. His name has never been included in the Specialist Register.
3. Briefly stated, the Medical Council (“the Council”) received a letter from the Hong Kong Police on 10 August 2021 complaining the Defendant of “*placing a video-recording device into the staff changing room in Kwong Wah Hospital*”.
4. According to the Police, “*a surgeon of Kwong Wah Hospital stumbled upon a folder in a desktop computer... inside a staff room specifically for surgeons. In the folder, there were seven videos of female colleagues getting changed in a staff changing room in Kwong Wah Hospital... IT Technician of Kwong Wah Hospital checked the [said] computer and found that the videos were likely to belong to Mr CHAN. Upon further investigation, Mr CHAN was arrested on 27 November 2017 and he admitted committing clandestine filming out of stress... three victims were involved. After seek[ing] legal advice, there is insufficient evidence to lay charge against Mr CHAN. However, it was recommended that this incident should be reported to the Medical Council of Hong Kong for possible disciplinary actions.*”
5. The Police subsequently provided the Secretary of the Council with three digital versatile discs (“DVDs”) which included the video-recording of the cautioned interview of the Defendant on 27 November 2017. Copies of the same with immaterial video clips redacted were placed by the Legal Officer before us for our consideration. Two of the three DVDs contained video clips stored in two Secure Digital High Capacity (“SDHC”) cards seized by the Police from the Defendant’s locker in the Hospital and video clips retrieved from the said

desktop computer.

6. For the purpose of the conduct of this inquiry, the Secretary and the Defendant have agreed amongst others that: -

(1) During a video-recorded interview on 27th November 2017, the Defendant admitted under Police caution, *inter alia*, that he: -

(a) purchased three clandestine video-recording devices online in or around August/September 2017;

(b) placed two of the video-recording devices in a changing room in the Hospital in or around October/November 2017;

(c) recorded two female individuals who were changing clothes in the said changing room in or around October/November 2017 by way of the two video-recording devices;

(d) transferred some of the videos taken in the said changing Room from the two video-recording devices to a computer in the Hospital; and

(e) stored the two video-recording devices in a locker in the Hospital in or around early November 2017;

(2) In or around November/December 2017, the Police retrieved the videos from: -

(a) a Kingston Micro SDHC Card (32 GB) contained in one of the two video-recording devices seized from the Defendant's locker in the Hospital;

(b) a SanDisk Micro SDHC Card (64 GB) contained in the other video-recording device seized from the Defendant's locker in the Hospital; and

(c) the said desktop computer.

Burden and Standard of Proof

7. We bear in mind that the burden of proof is always on the Secretary 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 against the Defendant here is a serious one. Indeed, it is always a serious matter to accuse a registered medical practitioner of misconduct in a professional respect. Therefore, we need to look at all the evidence and to consider and determine each of the re-amended disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

9. The Defendant admits the factual particulars of the re-amended disciplinary charges against him. It remains for us to consider and determine on the evidence whether he has been guilty of misconduct in a professional respect.
10. Irrespective of the Defendant's motive or purpose, there is no doubt in our minds that clandestine video-recording of individuals, particularly female colleagues at the Hospital, whilst they were getting changed in a staff changing room was scandalous and despicable.
11. We do not wish to speculate why the Department of Justice considered that there was insufficient evidence to lay criminal charge against the Defendant. There is also no doubt in our minds that what the Defendant had done in the present case was premediated. Indeed, the Defendant was captured in the video clips to have entered the said changing room several times, apparently to check whether the video-recording devices were functioning.
12. By placing without reasonable justification clandestine video-recording devices in a changing room in the Hospital, the Defendant has in our view by his conduct in the present case fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of

misconduct in a professional respect as per the re-amended disciplinary charge (a).

13. It is evident to us from viewing the video clips that the said changing room was frequented by the Defendant's female colleagues at the Hospital, who wished to change their clothes before or after work.
14. It is also evident to us from viewing the video clips that the female victims, who were captured whilst changing clothes in the said changing room, were unaware of the video-recording devices despite they were shown in the video clips to be at a close distance to the video camera on a number of occasions. Indeed, two of the female victims told the Police after the arrest of the Defendant that they had no knowledge of the clandestine video-recording being taken of them in the said changing room. It was also mentioned in their police witness statements that they did not consent to the same.
15. Be that as it may, by recording without reasonable justification individual(s) in a changing room of the Hospital, in which any individual can reasonably be expected to be changing clothes, the Defendant has again in our view by his conduct fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we also find him guilty of misconduct in a professional respect as per the re-amended disciplinary charge (b).
16. Leaving aside the purpose or motive behind the Defendant's misconduct, be it for gratification of his deviant desire or otherwise, we are firmly of the view that by possessing without reasonable justification videos taken of female victims in a changing room in the Hospital by way of clandestine video-recording devices, the Defendant has in our view by his conduct fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we also find the Defendant guilty of misconduct in a professional respect as per the re-amended disciplinary charge (c).

Sentencing

17. The Defendant has a clear disciplinary record.
18. In line with our published policy, we shall give the Defendant credit in sentencing for his admission.

19. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant but to protect the public from persons who are unfit to practise medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.
20. Before sentencing the Defendant, we exercised our power under section 33(1)(b) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (the “Regulation”) and directed this inquiry be adjourned and the case of the Defendant be referred to the Health Committee of the Council for determining whether his fitness to practise is impaired.
21. On referring the case of the Defendant to the Health Committee, we also directed pursuant to section 33(2) of the Regulation the Secretary to invite, by a notice in writing, the Defendant to submit at his own costs to medical examination by one or more examiner(s) acceptable to the Health Committee; and to agree to those examiner(s) furnishing the medical report(s) on his fitness to practise to the Health Committee for consideration.
22. On 8 June 2023, the Defendant was interviewed by Dr May LAM, a specialist in psychiatry and a medical examiner acceptable to the Health Committee, and her subsequent medical report on the Defendant dated 20 June 2023 was placed before the Health Committee at its hearing held on 22 November 2023.
23. By a letter dated 27 December 2023 from the Chairman of the Health Committee, we were informed that the Health Committee had found at its hearing held on 22 November 2023 that the Defendant is physically and mentally fit to practise medicine, surgery or midwifery. In addition, a copy of the decision of the Health Committee was attached with the letter for our reference.
24. We have considered all the submissions of mitigation made on behalf of the Defendant; reports from psychiatrists and clinical psychologist; and various character references adduced in mitigation.
25. We are however particularly concerned that what the Defendant had done in the present case was not a spur of the moment act, which was impulsive in nature.
26. For the protection of the public, we need to ensure that the Defendant has already reformed and the chance of re-offending would be low.

27. In its decision on the Defendant's fitness to practise, the Health Committee noted with agreement the opinion of the Defendant's treating psychiatrist, Dr LEUNG, that: -

“26. Good response to drug treatment, strong family support, effective clinical psychological therapy and addiction rehabilitation program have brought [Dr CHAN] back to normal family and social life in the past four years. The chance of recidivism is considered low.”

28. In his latest medical report dated 10 November 2023, Dr LEUNG supplemented that:-

“8. In conclusion, the overall prognosis of the mental condition of [the Defendant] is good. Subject to the conclusion of the inquiry by the Medical Council, it is planned that he will be weaned off his anti-depressant medication (Venlafaxine) and the maintenance phase of his psychiatric treatment is expected to be terminated one year after the outcome of the inquiry to ensure there is no relapse arising therefrom.

9. Even if [the Defendant] suffers from recurrence of his mental condition, which is unlikely, by reason of his good insight and self-discipline, [the Defendant] will likely seek psychiatric treatment such that it is highly improbable that he will re-offend in the future.”

29. In our view, there is a need, both for the protection of the public as well as the best interest of the Defendant, to monitor him for a period of time of his ability to cope with the underlying stresses.

30. Taking into consideration the nature and gravity of the present case and what we have heard and read in mitigation, we order that the name of the Defendant be removed from the General Register for a period of 4 months. We further order that the removal order be suspended for a period of 18 months on the following conditions, namely, that: -

- (a) The Defendant shall at his own expense submit himself to be examined by Dr May LAM or such other psychiatrist to be nominated by the Council at least 2 times at 6 months interval during the suspension period;

- (b) The examining psychiatrist shall be allowed full access to all treatment records kept on the Defendant by his treating psychiatrist; and
- (c) The examining psychiatrist shall report directly to the Council Chairman. Any irregularity or non-compliance with psychiatric treatment should be reported to the Council Chairman immediately.

Prof. TANG Wai-king, Grace, SBS, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong