

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr KAM Kai Man Joseph (甘啟文醫生) (Reg. No.: M05035)

Date of hearing: 5 April 2024 (Friday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr CHEUNG Chin-pang
Dr LAU Ho-lim
Ms FUNG Dun-mi, Amy, MH, JP
Mr WONG Ka-kin, Andy

Legal Adviser: Mr Stanley NG

Defence Counsel representing the Defendant: Mr Conan SHEK as instructed by
Messrs. Herbert Tsoi & Partners

Government Counsel representing the Secretary: Mr Raymond LAM

1. The charges against the Defendant, Dr KAM Kai Man Joseph, are:

“That, he, being a registered medical practitioner:

(a) was convicted at the District Court on 23 May 2022 of four counts of the offence of misconduct in public office, which is an offence punishable with imprisonment, contrary to the Common Law and punishable under section 101I(1) of the Criminal Procedure Ordinance, Chapter 221, Laws of Hong Kong; and

(b) was convicted at the District Court on 23 May 2022 of two counts of the offence of fraud, which is an offence punishable with imprisonment, contrary to section 16A(1) of the Theft Ordinance, Chapter 210, Laws of Hong Kong.”

Facts of the case

2. The name of the Defendant has been included in the General Register from 8 July 1983 to the present. His name has never been included in the Specialist Register.
3. By an email dated 23 May 2022, Messrs. Morley Chow Seto (“MCS”), Solicitors, on behalf of the Defendant, informed the Medical Council that the Defendant was convicted on 23 May 2022 on his own plea in District Court Case No. DCCC 353 of 2021 to six criminal charges, as follows:
 - Criminal charges 2 to 5: Misconduct in public office, contrary to the Common Law and punishable under section 101I(1) of the Criminal Procedure Ordinance, Cap. 221.
 - Criminal charges 6 & 7: Fraud, contrary to section 16A(1) of the Theft Ordinance, Cap. 210.
4. By another email dated 17 June 2022, MCS informed the Medical Council that the Defendant was sentenced on 17 June 2022 to a total imprisonment term of 31 months for the said six criminal charges.
5. According to the Reasons for Sentence in DCCC 353 of 2021, the Defendant joined the Department of Health (“DH”) in 1984 as a Medical and Health Officer. In 1997, the Defendant was promoted to Consultant Medical Microbiologist (“CMM”). The Defendant was a directorate civil servant with the rank of Consultant D2.
6. For over 8 years up to September 2012, the Defendant was the CMM(2) of the Public Health Laboratory Services Branch (“PHLSB”) under the Centre for Health Protection. The Defendant’s office was then located in Public Health Laboratory Centre (“PHLC”).

7. In 2005, the Microbiology Division, which was under the PHLSB, was divided into 2 teams. From that time to September 2012, the Defendant was the head of one team and was also the person-in-charge of a number of laboratories, including the Hong Kong Tuberculosis Reference Laboratory (“HKTRL”).
8. The Defendant was on pre-retirement leave between 29 September 2012 and 12 April 2013, and had retired from the DH on 13 April 2013. After the retirement, the Defendant was appointed as a Clinical Associate Professor (Honorary) at the Stanley Ho Centre for Emerging Infectious Diseases of the Chinese University of Hong Kong (“CUHK”).
9. In 1992, the Defendant set up a non-profit-making organization known as the Hong Kong Association of Medical Microbiologists (“HKAMM”). Between November 1992 and December 1999, the Defendant was the chairman of HKAMM, and after that, he became an ordinary member of HKAMM. The Defendant opened a bank account for the HKAMM with Kwong On Bank Limited (“the KOB Account”). The Defendant was the sole authorized signatory and the only person operating the KOB Account.
10. In respect of criminal charge 2 (misconduct in public office) of which the Defendant was convicted on his own plea, the misconduct of the Defendant was that he had misrepresented to Dr Watanabe of the National Institute of Infectious Diseases (“NIID”), a research institute attached to the Ministry of Health, Labour and Welfare of the Japanese Government, that HKAMM was the same as PHLC or DH in Hong Kong, and the Defendant had authority to enter into 7 service agreements with NIID for organization of meeting and workshops at the PHLC between 2006 and 2012; and he entered into these agreements without authority. He also had falsely represented to NIID that the grants from them were for PHLC or DH to host events as aforesaid when he had directed the grants to be paid into the KOB Account which was within his own control. Between 2007 and 2012, 11 million Japanese yen (equivalent to HK\$939,243) was sent to the KOB Account, most of which was subsequently withdrawn by cash or transferred into the Defendant’s personal bank account held with the Hang Seng Bank (“HSB Account”).
11. In respect of criminal charge 3 (misconduct in public office) of which the Defendant was convicted on his own plea, the misconduct of the Defendant was that he knowingly made a false representation to Mr Gemert of the World Health Organization (“WHO”) that HKAMM was a contractual partner of

HKTRL or DH in Hong Kong and the Defendant had authority of HKTRL or DH to enter into an agreement regarding a project (referred to as Project A) with WHO for the provision of services by HKTRL; and he entered into the said agreement without authority; and also knowingly making false representation to WHO that US\$38,788 (equivalent to HK\$300,858.85) service fee was meant to be for HKTRL or DH to implement the services when this service fee was dishonestly appropriated by the Defendant to the KOB Account, and the service fee was ultimately for his own benefit.

12. In respect of criminal charge 4 (misconduct in public office) of which the Defendant was convicted on his own plea, the modus operandi of this offence was similar to that of criminal charges 2, 3 and 5. The misled party under this charge was Mr. O'Brien of the Foundation for Innovative New Diagnostics ("FIND"), a non-profit organization which provided innovative and affordable diagnostic products to developing countries. Between 9 June 2009 and 5 March 2012, 4 remittances in the total sum of US\$239,951 (equivalent to HK\$1,860,926.84) were made from the bank account of FIND to the KOB Account. Shortly after receipt of each payment, the Defendant transferred the money to his HSB Account by cheque. Total amount of money transferred to his HSB Account was HK\$1,675,500. The Defendant also transferred a total sum of HK\$190,000 to a joint account held between the Defendant and his wife.
13. In respect of criminal charge 5 (misconduct in public office) of which the Defendant was convicted on his own plea, the modus operandi of this offence was similar to that of criminal charge 3. The misled party was Dr Mandal of WHO regarding another project (referred to as Project B1). In the commission of the offence, the Defendant misrepresented to WHO that the supplier of service was HKTRL, but as HKTRL did not hold an independent bank account, all financial transactions of HKTRL with third parties had to go through its working partner HKAMM and made payments into the KOB Account. The offence continued for about 9 months in 2012 and the money involved was US\$25,369 (equivalent to HK\$196,383.97), which was remitted by WHO to the KOB Account. On 25 January 2013, the Defendant transferred a sum of HK\$196,000 by cheque from the KOB Account to the HSB Account.
14. In respect of criminal charge 6 (fraud) of which the Defendant was convicted on his own plea, the offence took place over a period of 1 year and 3 months,

up to 3 July 2013, and the amount involved was US\$4,000 (equivalent to HK\$30,977.50). The Defendant had by deceit falsely represented to Dr Mandal of WHO, that HKAMM and HKTRL were working partner and that HKTRL had no independent bank account to receive payment from WHO, with intent to defraud Dr Mandal, inducing him and his colleagues to enter into an agreement and transferring money into the KOB Account. The Defendant also knowingly misrepresented to Dr Mandal that HKTRL would be under renovation in March 2013 and suggested visiting other places instead. This offence was a fraud conviction involving breach of trust by the Defendant, at least for the period up to 12 April 2013, when the Defendant retired from the DH.

15. In respect of criminal charge 7 (fraud) of which the Defendant was convicted on his own plea, the Defendant committed this offence in circumstances very similar to criminal charge 6. Dr Mandal was defrauded by the Defendant using the same representation. This offence continued for nearly 2 years, up to March 2014, and the money involved was US\$75,903 (equivalent to HK\$587,784.47). This offence was a fraud conviction involving breach of trust by the Defendant, at least for the period up to 12 April 2013, when the Defendant retired from the DH.
16. The Defendant had made full restitution of the sums involved in criminal charges 2 to 7 on a voluntary basis shortly before the criminal trial.
17. According to the Certificate of Conviction dated 20 July 2022 in DCCC 353 of 2021, for criminal charges 2 to 7, the Defendant was sentenced to a total imprisonment of 31 months.

Findings of the Inquiry Panel

18. There is no dispute that the offences of “misconduct in public office” and “fraud” were at all material times and still are offences punishable with imprisonment. By virtue of section 21(1)(a) of the Medical Registration Ordinance (“MRO”), Cap. 161, Laws of Hong Kong, our disciplinary powers against the Defendant are engaged.
19. Section 21(3) of the MRO expressly provides that:

“Nothing in this section shall be deemed to require an inquiry panel to inquire into the question whether the registered medical practitioner was properly convicted but the panel may consider any record of the case in which such conviction was recorded and any other evidence which may be available and is relevant as showing the nature and gravity of the offence.”

20. Taking into consideration the Reasons for Sentence and the Certificate of Conviction in DCCC 353 of 2021, we find the aforesaid convictions to be conclusively proven against the Defendant.
21. Accordingly, we find the Defendant guilty of both disciplinary offences as charged.

Sentencing

22. The Defendant has a clear disciplinary record.
23. In line with published policy, we shall give him credit for his frank admission and cooperation in this inquiry. However, given that there is hardly any room for dispute in a disciplinary case involving criminal conviction, the credit to be given to him must necessarily be of a lesser extent than in other cases.
24. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant for the criminal offences for a second time. Rather, it is 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.
25. It is clearly stated in section 27.2 of the Code of Professional Conduct (2016 edition) that:

“A particularly serious view will likely be taken in respect of offences involving dishonesty (e.g. obtaining money or goods by deception ... fraud...) ...”
26. We accept what the learned Judge said in the Reasons for Sentence that the Defendant used to be a man of positive good character, had significant contribution to Hong Kong, mainland China as well as the neighbouring countries in terms of public health and the prevention of diseases, and had

devoted extra time and efforts in voluntary service beyond that of his duty in the DH, using his medical skills.

27. We also accept what the learned Judge said in the Reasons for Sentence, as follows:

“ ...

115. The defendant orchestrated a scheme to misappropriate funds which should belong to PHLC/DH, the defendant's employer, for the benefit of himself over this prolonged period. The same involved making numerous false representations.

...

117. The defendant had breached and abused the trust reposed in him. This is a serious case of misconduct in public office.

...

122. It must be noted, however, that it is partly his job duties in DH and that whilst this court accepts submission by defence counsel that the defendant's life goal was to serve the community passionately in the prevention of infectious disease and in medical research, this court has reservation regarding the submission by defence counsel that the defendant did it all altruistically. The commission of the offences in this case speaks for itself.

...

139. The misconduct of the defendant ... and he entered into the said agreement without authority; and also knowingly making false representation to WHO that US\$38,788 service fee was meant to be for HKTRL or DH to implement the services when this service fee was dishonestly appropriated by the defendant, to the KOB Account of which he had sole control, and the service fee was ultimately for his own benefit.

...

170. The defendant was at the material time the person in charge of a number of laboratories including HKTRL under DH. The convictions of the 6 charges show that between 1 September 2005 and 31 March 2014, ie nearly 9 years, the defendant had abused the trust reposed in him whilst committing these offences during this period. He had benefitted himself in the sum of

\$4,256,931.63, being monies intended for his employer, DH, but making use of the resources of the DH in the process.

...

172. *This is a serious breach of trust case which is practised over a long time ...”.*

28. We are deeply concerned that the Defendant went all the way to orchestrate a scheme, which lasted over a period of time, to misappropriate funds which should belong to PHLC/DH.

29. According to the Defendant’s submission to the Preliminary Investigation Committee (“PIC”) of the Medical Council dated 21 February 2023, the Defendant had these to say:

“ ...

33. *... I would emphasize that the 2 million yen (roughly HK\$135,000) paid to HKAMM by NIID was meant to be a subsidy for the hosting country. Every cent of the subsidy was ultimately put towards the benefit and needs of the attending countries and their participants. In fact, for each year in which Hong Kong hosted a PNAP conference, there would always be a shortfall and I would pay for the shortfall out of my own pocket.*

...

35. *... From my recollection, I often overspent what I received for Hong Kong at HKAMM to help the impoverished countries. Instead of formally asking for reimbursement from the DH, I dug into my own pocket to do this. **In short, I had not taken the subsidy meant for Hong Kong for my own personal benefit...***

...

50. *... I would stress that I derived no personal financial benefit from these projects. However, despite repeated efforts to see if my counterparts at the MOH or Finance Office could be my witness in defence of these charges, I received no response at all.*

...

52. *... Again, I derived no personal financial benefit from this project.*

53. *Similarly, despite repeated efforts to see if my counterparts at the MOH could be my witnesses in defence of this charge, I received no response at all.*

...

60. *... In short, all of the shortfall was borne by me personally. **Again, I derived no personal financial benefit from this project.***

...

69. *More importantly, I would explain that out of the contracted payments for the relevant projects and workshops received by bank accounts under my control, I only received payments from the PNAP workshops and meeting (Charge 2) and used the same to additionally support participants from impoverished countries on behalf of Hong Kong. I would stress that in fact, for each year in which Hong Kong hosted a PNAP conference, there would always be a shortfall and I would pay the shortfall out of my own pocket. **I derived no personal financial benefit out of the PNAP projects (Charge 2).** For the projects under Charges 3-7 which were related to DPRK and China, hence involving the Chinese MOH and its Finance Office, all payments I received were forwarded to the Finance Office or its designated officers as soon as practicable. Even the HK Government could not recoup the expenses incurred on our part as mentioned when the Finance Office said they had used the moneys elsewhere rather than in accordance with approved budgets. For my part, I had also paid out of my own pocket to additionally support the projects as mentioned above. **In short, I derived no personal financial benefit from any of the projects related to DPRK and China (Charges 3-7).***

...

72. *As it turned out, the prosecution was still serving new evidence in April 2022 ... Accordingly, much as I did not want to, I had to face the real difficulties and risk of convictions after trial, in which case I would lose all sentence discounts I might be entitled to. I therefore took the difficult decision to make restitution and plead guilty to the charges.*

...

74. *Notwithstanding the court's reservation, I would stress that I was*

involved in the projects (the subject of the offences in question) altruistically in line with my life goal.

75. *Finally, I would stress that I have never been greedy or dishonest for my own benefit ...”*

30. What the Defendant submitted in his PIC submission is that he was not dishonest, had derived no benefit from the sums involved in the six criminal charges, and he did not really want to plead guilty to the six criminal charges and make restitution of the involved sums. The Defendant seemed to be suggesting that he was innocent.
31. The Defendant was found guilty of all the six criminal charges on his own plea. We are shocked that the Defendant still maintained that he was not dishonest, and had derived no benefit from all the sums involved. The Defendant’s submission was clearly at odds with what the learned Judge wrote in the Reasons for Sentence.
32. The criminal offences committed by the Defendant were very serious which involved dishonesty and breach of trust over a long period of time. The Defendant has already served his prison sentence. However, we still do not find the Defendant any remorseful.
33. The Defendant’s PIC submission was dated 21 February 2023, which was written roughly more than a year ago. The Defendant still tried to justify his wrongdoings to the PIC.
34. In mitigation, the Defendant’s counsel maintained that the Defendant had derived no personal gain from the offences. When asked about how to reconcile with what the learned Judge wrote at a number of paragraphs that the sums involved were for the Defendant’s own benefit, the Defendant’s counsel submitted to us that the learned Judge was wrong in coming to such conclusion. This we cannot accept. The Defendant’s counsel cannot provide to us any concrete evidence that the Defendant had received no personal gain. There is also nothing concrete before us to suggest that the learned Judge was wrong in his conclusion.
35. There is nothing to convince us that the Defendant has rehabilitated.

36. Although the Defendant had made full restitution of the sums involved, after considering what he wrote at paragraph 72 of his PIC submission, we do not accept that he made restitution at the time out of remorse.
37. It is essential in our view to maintain amongst members of the public a well-founded confidence that any registered medical practitioner whom they consult will be a person of unquestionable integrity, probity and trustworthiness. Any person who lacks any of these essential attributes can hardly be a fit and proper person to practise medicine.
38. Having regard to the nature and gravity of this case and what we have heard and read in mitigation, we shall make a global order in respect of charges (a) and (b) that the name of the Defendant be removed from the General Register for a period of 12 months.
39. We have considered whether the operation of the removal order should be suspended. We do not consider that this is a suitable case for suspension of the removal order for reasons aforesaid.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong