

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHAN Kwok Wing (陳國榮醫生) (Reg. No.: M07843)

Date of hearing: 11 October 2022 (Tuesday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr Pierre CHAN
Dr KWOK Siu-yin, Janette
Ms LI Siu-hung
Mr NG Ting-shan

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Warren SE-TO of
Messrs. Mayer Brown

Government Counsel representing the Secretary: Miss Katrina CHAN

The Defendant is not present.

1. The charge against the Defendant, Dr CHAN Kwok Wing, is:

“That, he, being a registered medical practitioner was convicted at the Shatin Magistrates’ Courts on 3 January 2022 of the offence of indecent assault, which is an offence punishable with imprisonment, contrary to Section 122 (1) of the Crimes Ordinance, Chapter 200, Laws of Hong Kong.”

Facts of the case

2. The name of the Defendant has been included in the General Register from 3 September 1990 to the present. His name has been included in the Specialist Register under the Specialty of Endocrinology, Diabetes & Metabolism since 4 March 1998.
3. There is no dispute that the Defendant was convicted after trial at the Shatin Magistrates' Courts on 3 January 2022 of the offence of indecent assault and was sentenced to imprisonment for 21 days.
4. By an email dated 31 January 2022, the Defendant reported his criminal conviction to the Council.
5. The Defendant subsequently lodged an appeal against the said conviction but was dismissed by Madam Justice LAI on 24 June 2022. A copy of the Judgment on appeal was adduced by the Legal Officer as part of her case against the Defendant before us.
6. There is no dispute that the incident leading to the arrest and subsequent conviction of the Defendant for the offence of indecent assault happened on a public bus. Details of how the victim was indecently assaulted by the Defendant were set out in the following paragraph of the Judgment of Madam Justice LAI dated 24 June 2022:

“4. 本席採納答辯人簡述女子 X 的證供如下：

「5. 於 2020 年 11 月 10 日早上，X 在巴士總站登上巴士，坐在上層右方車頭數起第二排近窗的位置。上車後，X 合上雙眼休息，期間曾睡著。

6. X 醒來時意識到有人坐在自己的左邊，並感覺到這人的右大腿與自己的左大腿摩擦，力度細，動作有點像踭腳。X 張開眼發現這人是上訴人。當時，X 感到驚慌，大腿輕微向窗的方向縮，但上訴人越貼越近。之後，上訴人將其右大腿晾上 X 的左大腿上，即上訴人的右大腿下方接觸着 X 的左大腿上方。X 有感受到對方腳的重量。然後，上訴人進一步將他的右腳從 X 膝蓋位置攝進 X 兩腿之間。X 形容動作慢，不是十分大力。她當時仍然是十分驚慌。最初上訴人的姿勢不容許他的腳攝

進去而被迫移開，然後上訴人站起來調校冷氣，再調整身體把腳攝在她雙腳中間。

7. X 補充在上訴人的腿部進行上述的動作期間，他右手踭亦貼近自己左胸位置作一些不自然的郁動或磨擦。

8. 當巴士駛出大老山隧道後，X 恐怕上訴人會下車離開，便用雙腳夾住上訴人攝在自己雙腿間的腳，並向一名男乘客求助，指自己被非禮。上訴人即時想站起身，但左邊的男乘客向上訴人大喝，要求他離開，X 鬆腳，上訴人就走到下層。X 跟著到下層，向司機表示被非禮。司機把車停在站直至警察到場把上訴人拘捕。」

7. Furthermore, according to the Brief Facts of Case adduced by the prosecution at the criminal trial of the Defendant, the victim was a 27 years old lady, who was wearing short skirt, and the whole incident lasted for about 20 minutes.

Findings of the Inquiry Panel

8. There is no dispute that the offence of indecent assault is punishable with imprisonment. By virtue of section 21(1)(a) of the Medical Registration Ordinance, Cap 161 (“MRO”), our disciplinary powers against the Defendant are engaged.

9. 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.”

10. Since the Defendant’s appeal against conviction has already been dismissed, we are entitled to take the said conviction as conclusively proven against the Defendant.

11. Accordingly, we also find the Defendant guilty of the disciplinary offence as charged.

Sentencing

12. The Defendant has a clear disciplinary record.
13. We shall give the Defendant credit for his cooperation in that he did not contest the disciplinary charge. 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 less extent than in other cases.
14. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant for the indecent assault for a second time but to protect the public from persons who are unfit to practice medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.
15. It is clearly stated in paragraph 27.2 of the Code of Professional Conduct (2016 edition) (the “Code”) that a particularly serious view will likely be taken in respect of offences involving indecent behaviour.
16. We are told in mitigation that the Defendant attributed the indecent assault to his poor impulse control. We are deeply concerned that the Defendant indecently assaulted the victim in broad daylight on public transport and the whole incident lasted for some 20 minutes. We fully agree with the learned trial magistrate that the manner in which the Defendant committed the indecent assault amounted to an insult to the victim.
17. We are also told in mitigation that in order to gain insight into his problems and to avoid future transgressions, the Defendant has attended multiple counselling sessions. Our attention was drawn by the Defendant’s solicitor to a report dated 5 October 2022 written by one Mr TSUI, Mental Health Counsellor of Tree of Hope Counselling and Development Centre in which it was stated that:-

“...Through careful understanding and analysis, the crime that Dr. Chan committed could be mainly explained as a consequence of poor impulse control and inappropriate emotion management. Dr. Chan gained insight into the causes of these problems as I felt a genuine intention on his part to reform himself and become a better person.”

18. We need to emphasize that insight is not equated to remorse. The Defendant mentioned in his apology letter dated 3 October 2022 that he felt deep regret for the damage done to the victim, his family and the profession; and he was most saddened and distressed by what he had done. We appreciate the Defendant's effort to seek professional assistance. Regrettably, there is nothing before us to show that the Defendant has got to the root of his problems. In particular, the Defendant never explained why he had an impulse to commit assault on a female stranger in broad daylight on public transport.
19. 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. A registered medical practitioner who lacks any of these essential attributes can hardly be a fit and proper person to practice medicine.
20. We need to ask ourselves whether the Defendant can be safely allowed to remain in practice, having regard to our responsibility to safeguard the public from persons who are unfit to practice medicine.
21. Taking into consideration the nature and gravity of this case and what we have heard and read in mitigation, we order that the Defendant's name be removed from the General Register for a period of 6 months.
22. We have considered whether operation of the removal order should be suspended. We do not consider it appropriate to do so for the reasons aforesaid.

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