

香港醫務委員會

The Medical Council of Hong Kong

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**DISCIPLINARY INQUIRY**  
**MEDICAL REGISTRATION ORDINANCE, CAP. 161**

Defendant: Dr CHAN Wing Hing Norman (陳永興醫生) (Reg. No.: M14541)

Date of hearing: 5 January 2021 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS  
(Chairperson of the Inquiry Panel)  
Dr Hon Pierre CHAN  
Dr AU-YEUNG Kam-chuen, Sidney  
Ms HUI Mei-sheung, Tennessy, MH, JP  
Mr YANG Kwong-fai

Legal Adviser: Mr Edward SHUM

Senior Government Counsel representing the Secretary: Miss Carmen POON

The Defendant is not present.

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

*“That on or about 19 April 2018, he, being a registered medical practitioner, was ordered to be kept in prison for debt for a period of one month unless he will be sooner discharged in due course of law by Master J Wong in HCA 627/2010.*

*In relation to the facts alleged, 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 7 February 2005 to the present. His name has never been included in the Specialist Register.

3. The Defendant decided on his own volition not to be present either by himself or by his legal representative despite he had been duly served with the Notice of Inquiry dated 8 September 2020.
4. Briefly stated, the Medical Council received on 17 May 2018 a letter from a firm of solicitors acting for one Ms TAM complaining the Defendant of behaviour which fell below the standards of conduct expected of registered medical practitioners and had brought the medical profession into disrepute.
5. Attached to this letter was, amongst others, a copy of the Decision and Reasons handed down by Master J WONG on 22 March 2018 in the High Court Action No. 627 of 2010, in which Ms TAM was one of the Judgment Creditors and the Defendant was the Judgment Debtor.
6. The nature of the court application and the background of the case before Master J WONG were set out in the following extracts from the Decision and Reasons:

*“APPLICATION*

*1. This is an application by the judgment creditors to ask the court to imprison the judgment debtor under Order 49B rule 1B(1)(a) to (c) of the Rules of the High Court (“O.49 r.1B(1)(a) to (c) RHC”).*

*BACKGROUND*

*2. Parties to the disputes were neighbors at a building at Kardoorie Hill, Kowloon. For the present purpose, it suffices to say that the judgment creditors (the plaintiffs) commenced 2 actions (the present action was called by the Trial Judge as “Harassment Action” and, HCA 726/2010, “Nuisance Action”) against the defendant herein (“Mr. Chan”)/his mother...*

*3. In the Harassment Action, the Judge granted an injunction against Mr. Chan from assaulting, harassing, threatening or pestering the plaintiffs, including shouting, speaking obscenities or foul language towards them, taking photos of them without consent, causing damage to their residence and spraying or applying any paint thereof.*

4. *In the Nuisance Action, the Judge also granted an injunction against Mr. Chan and his mother from causing or allowing loud thumping noises, excessive and unreasonably loud television or radio noises, and so forth, affecting the plaintiff therein.*

5. *The Judge also awarded costs to the judgment creditors.*

6. *Mr. Chan and his mother took up the matter to the Court of Appeal but lost them again on 11 March 2015...*

7. *The judgment creditors thereafter sought to recover their costs and parties agreed on 30 August 2016 the sum of \$1,500,000 to settle them...*

8. *The total sums of \$200,000... (wherein Mr. Chan and his mother are defendants and appellants... was paid, but not... the amount of \$1,300,000 (wherein only Mr. Chan is defendant and appellant).*

9. *The judgment creditors sought different ways to try to enforce them, including injunction, prohibition orders and examination.*

10. *Regarding the examination, warrant of arrest was issued against Mr. Chan for his failure to attend court. On 7 March 2017, he (under bailiff custody) was brought before Madam Justice Barnes. After hearing from parties, the learned Judge made the usual discovery directions and warning against Mr. Chan as well as adjourning the examination to be dealt with by a Master.*

11. *The examination was thereafter conducted before me on 20 April 2017 and 21 August 2017. The judgment creditors thereafter issued the present summons seeking to imprison Mr. Chan...*

12. *Parties appeared before me on 22 March 2018... counsel acted for the judgment creditors, and Mr. Chan appeared in person. Having heard from them, I adjourned my decision to be given with reasons handed down today..."*

7. In exercising the discretion to imprison the Defendant, Master J WONG based his decision, in particular, on the following findings of facts:

- “(a) The judgment debt in the sum of \$1,300,000 comes from a consent order on the part of the judgment creditors and Mr. Chan to pay costs of the Harassment Action and its appeal.*
- (b) Regarding the sum of \$1,300,000, he has not paid the judgment creditor anything apart from a cheque for 1000 which was only sent to the solicitors acting for the judgment creditors on 8 November 2017.*
- (c) He disposed of his shares in the clinic to avoid the same being executed.*
- (d) He failed to disclose the financial documents as specifically directed by the court. He even went further to obstruct it.”*

8. In response to the Notice of Inquiry, the Defendant sent to the Secretary of the Medical Council an e-mail on 30 November 2020 in which he explained that:

- “1. I repaid as much of the debt as I could, but the complainant still felt unsatisfied.*
- 2. I was only held in the Lai Chi Kok Reception Centre for the said period, and was officially classified as a debtor (detainee): NOT a prisoner.*
- 3. The complainant personally paid (out of his own pocket) for me to be in held as a debtor (detainee), in the said Reception Centre: NOT “in prison”, which is wrongly stated in the charge against me.*
- 4. Due to the fact that I was NOT a prisoner, at any time, I was separated from prisoners and other detainees.*
- 5. As the said case was of NO public interest, the government (or the public) did NOT pay for my detention, which was a private stay.*
- 6. Please kindly note the differences between “in prison” and in detention (prisoner, detainee, and debtor), and contact the relevant departments (including the Correctional Services Department) for further clarification.*

7. *It was NOT a criminal matter.*
8. *Police was NOT involved NOR interested.*
9. *I was NOT handcuffed, fingerprinted, NOR photographed at any stage.*
10. *I did NOT and do NOT have a record of criminal conviction, NOR a record of being “in prison”. Please kindly check these facts with the Police Force and the Correctional Services Department.*
11. *During detention, I was allowed to wear my own clothing and to have meals delivered from designated local restaurants. No (prison) work was necessary. The said arrangement was definitely very different from being “kept in prison”.*
12. *If I had the money to settle the debt in full, while in detention, I would have been allowed to leave the said Reception Centre anytime.*
13. *I have been informed by the senior staff of the Reception Centre that my case was very minor and of insignificant consequence.*

*With the above facts (including I was NOT “kept in prison”, my best effort to pay the said debt, and the said matter was NOT related to our professional service, I sincerely hope the Medical Council will determine any action against me is unnecessary.”*

### **Burden and Standard of Proof**

9. 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.

10. There is no doubt that the allegation made against the Defendant here is a serious one. Indeed, it is always a serious matter to accuse any registered medical practitioner of misconduct in a professional respect. We need to look at all the evidence and to consider and determine the disciplinary charge against him carefully.

**Findings of the Inquiry Panel**

11. It is idle in our view for the Defendant to contend that he was held “*in detention*” and not kept “*in prison*”. It is clear to us from reading the Decision and Reasons handed down by Master J WONG on 19 April 2018 that the following orders were made against the Defendant:

“(a) *The bailiff do take the judgment debtor herein, Chan Norman, and deliver him into custody of the Commissioner of Correctional Services to be kept in prison for debt for a period of one (1) month unless he shall be sooner discharged in due course of law.*

(b) *The support and maintenance allowance of the imprisonment is fixed at the rate of \$725 a day.*

(c) *There is an order nisi that the judgment debtor herein, Chan Norman, do pay the judgment creditors costs of the application, including certificate for counsel for hearing on 22 March 2018, to be taxed, if not agreed.”*

12. The Legal Officer correctly reminded us at the beginning of this Inquiry that our disciplinary powers over the Defendant did not arise out of his being convicted of any criminal offence punishable with imprisonment. Rather, the Secretary’s case against the Defendant is that he has been guilty of misconduct in a professional respect.
13. It is trite law that misconduct in a professional respect includes personal behaviour which falls short of standards and reflects adversely on the medical profession.
14. It was held by the Court of Appeal in *Albert Wou v The Medical Council of Hong Kong* (unreported) CACV 35/1987; Cons VP, Clough & Power JJA; 26 November 1987 (at p.6) that misconduct in a professional respect:

*“...must be wide enough in their context to include misconduct by such a practitioner otherwise than in the pursuit of his practice which the Council, as his disciplinary body, reasonably determines to be misconduct of such a character and degree of seriousness that it tends to damage the reputation of his profession because it has been committed by such a practitioner.”*

15. In the more recent Court of Appeal’s decision in *Dr Benjamin Mark Herbert v Veterinary Surgeons Board of Hong Kong* [2018] HKCA 337, Yuen JA delivering the judgment of the Court of Appeal cited with approval (at para. 23) the following extracts from the judgment of Elias LJ in *The Queen (on the application of Remedy UK Limited) v The General Medical Council*:

*“(1) Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.*

...

*(6) Conduct falls into the second limb if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession of medicine into disrepute. It matters not whether such conduct is directly related to the exercise of professional skills.”*

16. Yuen JA went on to say (at para. 24) that:

*“It should however be noted that the use of the words such as “disgraceful” or “dishonourable” in these cases does not mean that the “litmus test” coined by counsel in *Dr To Chun Fung Albert v The Medical Council of Hong Kong*, has the force of law. As this court (Mayo VP, Le Pichon JA and Yeung J) held in that case, it is not to the point whether the relevant conduct can be fitted within the meaning of those words. Rather, the test is whether there has been a falling short of standards, of which the best judges are the members of the profession itself.”*

17. It is obvious that any civilized society depends upon the authority and effectiveness of orders made in its courts [see: *Arlidge, Eady & Smith on Contempt* (5<sup>th</sup> ed.) para. 12-5]. The court has a wide discretion as to whether to impose a sanction in cases of intentional breach of its orders. However, imprisonment is generally regarded as a matter of last resort, and especially in cases of civil contempt [see: *Arlidge, Eady & Smith on Contempt* (5<sup>th</sup> ed.) para. 14-5].
18. It is clear to us from reading the Decision and Reasons handed down by Master J WONG that the Defendant wilfully breached the court orders so as to obstruct the recovery of the judgment debts from him. And the fact that the most serious sanction, namely, imprisonment order, was imposed on the Defendant highlighted in our view the seriousness of his breach.
19. The Defendant's breach of the court orders was in our view not only dishonourable or disgraceful but had also brought the medical profession into disrepute.
20. For these reasons, we are firmly of the view that the Defendant's conduct has fallen short of the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find him guilty of misconduct in a professional respect as charged.

### **Sentencing**

21. The Defendant has a clear disciplinary record.
22. We bear in mind that the primary 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.
23. It is essential in our view to maintain amongst members of the public a well-founded confidence that any registered medical practitioner whom they consulted will be a person of unquestionable integrity, probity and trustworthiness. Any person who lacks these essential attributes should not be allowed to practise medicine in Hong Kong.



24. Despite the clear findings by Master J WONG, the Defendant still refused to acknowledge that the gravamen of his wrongdoings lay in that he wilfully breached the court orders so as to obstruct the recovery of the judgment debts from him. In our view, this illustrated not only the Defendant's lack of insight into his wrongdoings but also his flagrant disregard of the law.
25. But then again, regardless of his financial means to settle the judgment debts, the real point is that it was the Defendant's legal obligation to comply with the court orders to make discovery his financial documents. Worse still, the Defendant went all out to obstruct the recovery of the judgment debts from him.
26. As Master J WONG pointed out, the discretion to imprison the judgment debtor could hardly have been rightly exercised if the failure to pay the judgment debt was the result of inability to do so. Nor would we find the Defendant guilty of misconduct in a professional respect merely because of his lack of financial ability to settle the judgment debts.
27. Having regard to the nature and gravity of this case, we order that the name of the Defendant be removed from the General Register for a period of 1 month. We have considered whether the removal order should be suspended but do not find it appropriate to do so because of the Defendant's lack of insight into his wrongdoings and flagrant disregard of the law.

Prof. LAU Wan-yee, Joseph, SBS  
Chairperson of the Inquiry Panel  
The Medical Council of Hong Kong