

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 Yat Fai (陳日暉醫生) (Reg. No.: M11408)  
(formerly registered as CHAN Yan Fat Alfred 先前註冊為陳恩發)

Date of hearing: 27 June 2022 (Monday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP  
(Chairperson of the Inquiry Panel)  
Dr MAK Siu-king  
Dr LUM Chor-ming, Christopher  
Prof. WONG Yung-hou, MH  
Mr YEUNG Chi-wai, Edwin, MH

Legal Adviser: Mr Edward SHUM

The Defendant is present and he is not legally represented.

Government Counsel representing the Secretary: Mr Louis POON

1. The charge against the Defendant, Dr CHAN Yat Fai, is:

*“That he, being a registered medical practitioner, was convicted at the Kowloon City Magistrates’ Courts on 20 August 2021 of two counts of committing an act outraging public decency, which is an offence punishable with imprisonment, contrary to Common Law.”*

**Facts of the case**

2. The name of the Defendant has been included in the General Register

from 8 July 1997 to the present. His name has been included in the Specialist Register under the Specialty of Respiratory Medicine since 6 October 2004.

3. By a letter dated 7 September 2021, the Defendant informed the Medical Council (the “Council”) that he was convicted after trial on 20 August 2021 of the offence of “*Committing an act outraging public decency*”.
4. Through the assistance of the Department of Justice, the Council obtained from the Kowloon City Magistrates’ Courts a copy of the Certificate of Trial of the Defendant and the transcript of his hearing before the trial Magistrate (the “Transcript”).
5. According to the Certificate of Trial, the Defendant was found guilty of 2 counts of the offence of “*Committing an act outraging public decency*” contrary to Common Law and was sentenced by the trial Magistrate on 2 September 2021 to “*Community Service Order for 240 hours*”.
6. According to the Transcript, the trial Magistrate found proved on the evidence adduced at the trial that the 1<sup>st</sup> prosecution witness (“PW1”), a lady in her 30s, was travelling on MTR from Central towards the direction of Tsuen Wan in the evening of 2 July 2020. When approaching Yaumatei MTR Station, the 2<sup>nd</sup> prosecution witness (“PW2”), who was travelling in the same train compartment, told PW1 that she saw the Defendant taking underskirt photographs of PW1 with his mobile phone. The Defendant dashed out from the train compartment when the train doors opened. PW1 gave chase and grabbed hold of the Defendant’s backpack. During the struggle, PW1 and the Defendant fell on the platform floor. Some people helped PW1 to subdue the Defendant before the Police arrived. After arresting the Defendant, the Police found in his mobile phone, amongst others, 13 photographs depicting thighs and/or calves of persons in skirts. According to the records shown on the photographs, they were all taken during the time when PW1 and the Defendant were travelling in the same train compartment.

### **Findings of the Inquiry Panel**

7. The offence of “*committing an act outraging public decency*” was and still is an offence punishable with imprisonment under section 101I of the Criminal Procedure Ordinance, Cap. 221. By virtue of section 21(1)(a) of the Medical Registration Ordinance, Cap. 161 (“MRO”), our disciplinary powers against the

Defendant are engaged.

8. 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.”*

9. Taking into consideration the Certificate of Trial and the Transcript, we find the aforesaid conviction to be conclusively proven against the Defendant.

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

### **Sentencing**

11. The Defendant has a clear disciplinary record.

12. In line with our published policy, we shall give the Defendant credit for his cooperation throughout these disciplinary proceedings. However, given that there is hardly any room for dispute in a disciplinary case involving criminal conviction, the credit to be given to the Defendant must necessarily be of a lesser extent than in other cases.

13. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant for the criminal offence for a second time, 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.

14. In response to the Notice of Meeting issued by the Preliminary Investigation Committee (“PIC”) of the Council, the Defendant submitted in his letter dated 20 December 2021 that:-

*“I confirm that the agreed brief facts and the court transcripts have accurate account of what had happened. As being pointed out by the Magistrate..., my acts had been under effect of mental illness and psychological disturbance. Though there might have been chance to treat the mental/psychological*

*conditions before it affected my behavior, I had not resorted to assistance from relevant disciplines. The magistrate also commented that I already sought help from psychiatrist and clinical psychologist to treat the underlying condition after the acts were done, and he accepted this as a positive way I had adopted to face the real problems.*

*I hope this highlight of Court Transcripts may lead to your understanding of my case in full aspects. I will humbly respect to your decision made during the meeting.”*

15. We also note from reading the Transcript that the trial Magistrate remanded the Defendant for 2 weeks after trial and called for a psychological report on him. In this connection, our attention is drawn by the Defendant to a Memo exchanged on 26 August 2021 between the Probation Officer and his treating psychiatrist, Dr TSANG, who commented on the Defendant’s then mental conditions as follows:-

*“1. Patient’s diagnosis: Major Depressive Disorder, single episode, moderate (MDD) and Obsessive Compulsive Disorder (OCD) in a background of work related anxiety*

*2. Patient’s symptoms: repetitive uncontrollable thought and urge and rumination, low mood, anhedonia, lack of energy, inattention, self blame, interrupted sleep and excessive negative evaluation of self*

*3. Date of onset and present condition: For OCD and MDD: about 7-8 years ago, shortly when he started working in Tuen Mun Hospital*

*...*

*5. Impact on daily functioning: Now in remission and he is functioning normally*

*6. Frequency of psychiatrist treatment: Outpatient psychiatric follow-up once every 4-8 weeks*

*7. Compliance to medication: Good*

*8. Prognosis and future need for treatment: Good. Needs maintenance treatment for 2-3 years*

*9. In what extent and how his medical condition or symptoms might affect him*

*for the present offence?*

*At the relevant time of the alleged offence, he is highly likely acting under influence of both OCD and MDD that his cognitive and executive function, like attention, concentration, self-control, judgement and decision were substantially impaired.*

...

*12. Other remarks / suggestion: Patient suffering from OCD is very unlikely to act out his obsessive urge. He usually over-react by avoiding situations that might trigger him to have such urge. In Chan's case, it is likely that depression plays a significant role making him doing something against his rational mind. Upon treatment, the recidivist rate is considered very low."*

16. Our attention is also drawn by the Defendant to the medical report prepared by Dr TSANG on him dated 29 June 2021 that:-

*"16. For a few years, occasionally, when he felt very tense after work, on his way home, urge of underskirt shooting kept coming into his mind...*

*17. His repetitive and persistent urge of underskirt shooting and rumination of fear of being caught are likely to be obsessive urge and thoughts, symptom of Obsessive Compulsive Disorder.*

...

*20. For at least 2 years, he indicated... his mood further deteriorated. He was unable to feel happy. He found nothing could cheer himself up...*

*21. He had difficulty to get into sleep for a few years...*

*22. He found going to work a difficult task yet he still able to push himself to work. He worried he might not be able to perform at work.*

*23. He could not stop blaming himself not doing his job properly and brought disastrous outcome to his patients...*

...

*26. He felt he was useless. He indicated he was not a good husband and father. As he was not able to take good care of his wife and daughter.*

...

*45. To conclude, Mr. Chan is suffering from Obsessive Compulsive Disorder comorbid with Major Depressive Disorder, single episode, moderate. His*

*depression increased in severity in recent 2-3 years.*

...

*50. ... at the relevant time, he was acting in a depersonalised mental state that he felt himself leaving his body, felt numb and not be able to control his body...*

*52. ,, he acted out his underskirt shooting urge. It is highly likely that his depression played a significant part that his cognitive function... And depersonalization, result of severe anxiety, further jeopardize his self-control.*

...

*55. He is motivated for and had good response to treatment. He is in remission for both OCD and MDD when he was seen on 5 June 2021.*

*57. The prognosis of his condition is considered to be very good. The recidivist rate is considered low with regular psychiatric treatment.”*

17. When sentencing the Defendant to “*Community Service Order for 240 hours*”, the trial Magistrate specifically imposed the condition that he should receive in the meantime regular treatment from psychiatrist or psychologist and/or counselling from psychologist.
18. The Defendant told us in mitigation that he continued to receive after his trial regular follow up psychiatric treatments with Dr TSANG. In this connection, we note from reading the medical report prepared by Dr TSANG on the Defendant dated 16 June 2022 that:-

*“1. Mr Chan has been attending this clinic for Obsessive Compulsive Disorder (OCD) comorbid with Major Depressive Disorder (MDD), single episode, moderate since 3 July 2020.*

*2. An integrated treatment approach, including psychotherapy and medications, were given. He has been in full remission for OCD and MDD after treatment for 3 months. He is advised to attend follow-up and to take medication regularly to prevent future relapse.*

*3. When he was last seen on 28 May 2022 and via tele-interview today, he is in full remission. He’ll be seen again on 6 August 2022.”*

19. We need to emphasize that the Defendant’s mental conditions at the time of the

offence would only go to mitigation. In our view, any act of outraging public decency like the present one must be condemned. The Defendant frankly accepted that his outraging act was an insult to the dignity and privacy of the female victim for which he felt shameful.

20. We appreciate that the Defendant is a conscientious doctor and has tremendous support from his colleagues, patients and friends. We acknowledge that the Defendant has learnt a hard lesson and has gained insight into his wrongdoing.
21. We agree with Dr TSANG that the mental conditions of the Defendant at the time of the offence are currently in remission. But we need to ensure that the Defendant will not commit the same or similar offence in the future.
22. In our view, there is a need, both for the protection of the public as well as in the best interest of the Defendant, to monitor him for a period of time of his ability to cope with the underlying stresses and negative emotions.
23. Taking into consideration the nature and gravity of this case and what we have heard 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 operation of the removal order be suspended for a period of 2 years on the following conditions, namely, that:-
  - (a) the Defendant shall at his own expense submit himself to be examined by a psychiatrist nominated by the Council at least once every 6 months 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 at 6-monthly intervals. Any irregularity or non-compliance with psychiatric treatments should be reported to the Council Chairman as soon as practicable.

**Remark**

24. The name of the Defendant is included in the Specialist Register under the

Specialty of Respiratory Medicine. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration.

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