

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAU Ka Chun (Reg. No.: M18549)

Date of hearing: 28 May 2020 (Thursday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr YEUNG Hip-wo, Victor
Dr MAK Siu-king
Mr KWONG Cho-shing, Antonio, MH
Mr LAI Yat-hin, Adrian

Legal Adviser: Mr Edward SHUM

The Defendant is present and he is not legally represented.

Senior Government Counsel (Ag.) representing the Secretary: Miss Camille SHEK

1. The charges against the Defendant, Dr LAU Ka Chun, are:

“That, he, being a registered medical practitioner:

- (a) was convicted at the Kowloon City Magistrates’ Courts on 26 June 2019 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; and*
- (b) has been guilty of misconduct in a professional respect in that he failed to report to the Medical Council the conviction mentioned in paragraph (a) above within 28 days of the conviction, contrary to section 29.1 of the Code of Professional Conduct published in January 2016.”*

Facts of the case

2. The name of the Defendant was at all material times and still is included in the General Register. His name had been included in the General Register from 1 July 2017 to present. His name has never been included in the Specialist Register.
3. There is no dispute that the Defendant was convicted after trial at the Kowloon City Magistrates' Courts on 26 June 2019 of the offence of indecent assault and was later sentenced on 9 July 2019 to Community Service Order for 240 hours.
4. The Defendant subsequently lodged an appeal against his conviction but was dismissed by Deputy High Court Judge YIU on 9 January 2020. A copy of the Judgment on appeal was adduced by the Legal Officer as part of her case against the Defendant.
5. 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 bus.
6. Details of how the victim was indecently assaulted by the Defendant were set out in the following paragraphs of the Judgment of Deputy High Court Judge YIU:

“控方案情

3. 這是一宗在巴士上發生的非禮案件。控方指一名穿著校裙的 15 歲女童 X 乘搭巴士，在巴士上遭人非禮。

4. 2017 年 9 月 25 日早上約 7 時，X 在將軍澳景林邨登上九巴編號 98S 巴士，以其八達通卡繳付車費後，坐在巴士上層最後一排最左角落（面對車頭方向）的座位。最後排有 5 個座位，上訴人初時坐在同一排中間，過了一個站後移到 X 鄰座。其後 X 要下車離開座位時，請上訴人縮腳，但當 X 在上訴人膝蓋前方「攝」過去時，上訴人伸手進 X 裙底捏了她臀部一下。

5. X 因要趕返學校，未有多加理會，但坐在同一排最右座位的男乘客，即第二控方證人 PW2 目擊事件，遂出言大聲喝止上訴人，且問 X 是否報警，但 X 因趕著上學，故回應說不用了。

6. 當時上訴人突然垂下頭，閉上眼睛，裝著睡覺，男乘客用手提電話拍下上訴人的照片(P11)，並將事件報警。”

7. The Defendant did not report his conviction to the Medical Council within 28 days of the conviction.
8. Meanwhile, by a letter dated 27 June 2019, the Hospital Authority with which the Defendant was employed notified the Medical Council of the Defendant's conviction and suspension from his duty as resident of Princess Margaret Hospital.
9. The Defendant later reported his conviction to the Medical Council by e-mail on 2 August 2019.

Findings of the Inquiry Panel

10. There is no dispute that the offence of indecent assault is punishable with imprisonment. By virtue of section 21(1) of the Medical Registration Ordinance, Cap. 161 ("MRO"), our disciplinary powers against the Defendant are engaged.
11. 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."
12. We are therefore entitled to take the aforesaid conviction as proven against the Defendant.
13. Accordingly, we also find the Defendant guilty of the disciplinary charge (a).
14. It is clearly stated in section 29.1 of the Code of Professional Conduct (2016 edition) (the "Code") that:

"A doctor who has been convicted in or outside Hong Kong of an offence punishable with imprisonment or has been the subject of adverse findings in disciplinary proceedings by other professional regulatory bodies is required to report the matter to the Council within 28 days from the conviction or the adverse disciplinary finding, even if the matter is under appeal. Failure to report within the specified time will in itself be ground for disciplinary action. In case of doubt the matter should be reported."

15. Given the nature and gravity of the offence of indecent assault, we find the Defendant's failure to report his conviction to the Medical Council within the specified time to be inexcusable. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore also find the Defendant guilty of professional misconduct as per disciplinary charge (b).

Sentencing

16. The Defendant has a clear disciplinary record.
17. In line with our published policy, we shall give the Defendant credit for his cooperation in that he did not contest the disciplinary charges. 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.
18. 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.
19. It is clearly stated in paragraph 27.2 of the Code that a particularly serious view will likely be taken in respect of offences involving indecent behavior.
20. We are deeply concerned that the Defendant sexually assaulted a teenage girl in broad daylight on public transport.
21. It is essential in our view to maintain amongst members of the public a well-founded confidence that any medical doctor whom they consult will be a person of unquestionable integrity, probity and trustworthiness. Any person who lacks these essential attributes can hardly be a fit and proper person to practise medicine.
22. 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 practise medicine.
23. We would certainly expect the Defendant to look back and reflect on his wrongdoing. We need to emphasize that insight is not equated to remorse. However, there is nothing before us to show that the Defendant has insight into his wrongdoing.

24. We need to emphasize that the duty to report conviction lies in the Defendant. The fact that Hospital Authority had notified the Medical Council of the conviction does not relieve his obligation to comply with section 29.1 of the Code.
25. Taking into consideration 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 Defendant's name be removed from the General Register for a period of 4 months.
26. We have considered whether operation of the removal order should be suspended. We do not consider it appropriate to suspend the operation of the removal order for the reasons aforesaid.

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