

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr TANG Siu Fai (鄧兆暉醫生) (Reg. No.: M13953)

Dates of hearing: 2 September 2019 (Monday) (Day 1);
18 November 2019 (Monday) (Day 2);
21 November 2019 (Thursday) (Day 3); and
22 November 2019 (Friday) (Day 4)

Present at the hearing

Council Members / Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr. LAM Tzit-yuen, David
Dr. MOK Pik-tim, Francis
Mrs BIRCH LEE Suk-ye, Sandra, GBS JP
Mr WONG Hin-wing

Legal Adviser: Mr Edward SHUM

Defence Counsel representing the Defendant: Mr Paul LAM, Senior Counsel, as
instructed by Messrs. Mayer Brown

Senior Government Counsel representing the Secretary: Miss Carmen POON

1. The amended charge against the Defendant, Dr TANG Siu Fai, is:

“That after he entered into a professional relationship with Madam A on or about 18 September 2012, between the period(s) from about September 2012 to about February 2013, he, being a registered medical practitioner, improperly associated with Madam A in that he engaged in a personal relationship of a sexual nature with Madam A.

In relation to the facts alleged, he has been guilty of misconduct in a professional respect.”

Facts of the case

2. The Defendant was at all material times a registered medical practitioner. His name has been included in the General Register from 3 July 2003 to present. His name has also been included in the Specialist Register under the specialty of Clinical Microbiology and Infection since 3 February 2010.
3. Madam A was at all material times married to Mr B (the “Complainant”).
4. On 18 September 2012, Madam A was admitted to the Hong Kong Sanatorium & Hospital (“HKS&H”) for inpatient treatment of left foot cellulitis under the care of one Dr YUEN. Through the referral of Dr YUEN, Madam A first consulted the Defendant on 19 September 2012.
5. According to the medical records obtained from HKS&H, Madam A was hospitalized until 23 September 2012. Throughout the remainder of her stay in HKS&H, Madam A was always under the care of Dr YUEN and the Defendant. After her discharge from HKS&H, Madam A was followed up as an outpatient by the Defendant on 26 September 2012, 28 September 2012 and 3 October 2012.
6. There is no dispute that the Complainant lodged a complaint with the Medical Council by a letter dated 1 March 2013 and it was mentioned in his complaint letter that:

“I wish to make a serious complaint against a doctor who treated my wife last year.

The nature of the complaint is that he had an inappropriate relationship with my wife that began whilst she was his patient at the Sanatorium Hospital. The relationship developed into an adulterous affair...”
7. The Complainant subsequently clarified with the Medical Council by his e-mail dated 25 September 2015 that the complaint he lodged was against the Defendant.
8. In support of his complaint, the Complainant enclosed with his said e-mail electronic files of WhatsApp messages between the Defendant and Madam A during the period from 29 September 2012 to 21 November 2012 (the “Messages”) and recording of conversations between Madam A and their

mutual friend, Dr GANDOLFI, sometime in or around November 2012 (the “Audio Recordings”).

9. According to Mr B, after discharge from HKS&H, Madam A came home saying “how she did not realize that there were such friendly, handsome and young doctors at HKS&H and she would introduce them to her friends”.
10. Some days afterwards, there was a time when Madam A had to attend a follow-up at HKS&H and she was wearing a short and revealing dress. Mr B became suspicious and questioned why she had to wear a sexy dress to go to hospital.
11. Some days later, Mr B found out that Madam A had sent an e-mail on 8 October 2012 to someone with the e-mail address bsftang@hku.hk and in which Madam A opened her message by saying “Hi, honey...” and ended with “love [Madam A]”. Mr B confronted Madam A later that night who admitted that she was having an affair with the recipient of that e-mail and “they had spent a significant time together kissing and intimate touching”.
12. Mr B subsequently found out from the desktop computer he shared with Madam A at their matrimonial home the Messages and came to know that Madam A “had not stopped meeting the Defendant for intimate encounters”.
13. Meanwhile, Madam A and Mr B attended marriage counselling sessions a few times. During those sessions, Madam A admitted to the marriage counsellor, Ms BOLTON, that she had an affair with the Defendant and their relationship was intimate and involved sexual touching.
14. Some time later, Mr B also found in Madam A’s mobile phone recording of conversations between Madam A and their mutual friend, Dr GANDOLFI, in which Madam A admitted that she had a sexual relationship with the Defendant.

Burden and Standard of Proof

15. We bear in mind that the burden of proof is always on the Legal Officer 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.

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

Findings of the Inquiry Panel

17. We gratefully adopt as our guiding principle the following statement of the law by Lord Upjohn in the Privy Council's case of *McCoan v General Medical Council* [1964] 1 WLR 1107 [at 1112]:

“...One of the most fundamental duties of a medical adviser, recognized for as long as the profession has been in existence, is that a doctor must never permit his professional relationship with a patient to deteriorate into an association which would be described by responsible medical opinion as improper. It is for this reason that the Medical Acts have always entrusted the supervision of the medical advisers' conduct to a committee of the profession, for they know and appreciate better than anyone else the standards which responsible medical opinion demands of its own profession. Sexual intercourse with a patient has always been regarded as a most serious breach of the proper relationship between doctor and patient...”

18. The Defendant told us that he owed his wife and the medical profession an apology for having developed an improper personal relationship of a sexual nature with Madam A. However, the Defendant was adamant that the doctor-patient relationship between him and Madam A had already come to an end on 3 October 2012. All along, he merely treated Madam A as a friend. Their relationship became intimate only after the doctor-patient relationship had come to an end.

19. We disagree. When being asked by us, the Defendant accepted that he saw signs of developing into an improper relationship with Madam A before 3 October 2012. The Defendant further admitted that he and Madam A had tea at the coffee shop of HKS&H after the first follow-up consultation on 26 September 2012. According to Madam A, they had tea together for half an hour to one hour on that day, during which time they talked about things that

they were interested in. When being cross-examined, Madam A also agreed that she developed a fond feeling for Dr TANG after this meeting.

20. When being cross-examined, Madam A also accepted that her friendship with Dr TANG developed very quickly and she started to admire Dr TANG very much before the final consultation on 3 October 2012. According to Madam A, she asked Dr TANG during the second follow-up consultation on 28 September 2012 whether he would like to have lunch with her. Dr TANG replied in the affirmative. Later in the day, they went to a restaurant in Happy Valley and had lunch together for 2 to 3 hours, during which time they exchanged their phone numbers. When they departed, Madam A gave the Defendant “a big goodbye hug to thank him for taking her out for an enjoyable lunch”.
21. When being cross-examined, the Defendant admitted that he had upon Madam A’s request provided her with the address of his e-mail account with the Hong Kong University. The Defendant also admitted that prior to his receipt of the said e-mail of 8 October 2012, he and Madam A had already been texting each other via WhatsApp; and he called himself “Queenie Bone” and Madam A called herself “Meimei4S” in the Messages.
22. We accept the Complainant’s evidence that the Messages and Audio Recordings were stored in Madam A’s mobile phone. We also accept the Complainant’s evidence that he downloaded them from the home computer that he shared with Madam A at the matrimonial home onto electronic files; and he never tampered with their contents before sending copies of the same to the Secretary by e-mail.
23. It is evident in our view from reading the Messages that intimate language was used by the Defendant and Madam A as early as on 2 October 2012. For instance, we found in the Messages the following exchanges between the Defendant and Madam A on 2 October 2012:

“Meimei4S: I start to worry if you do this to a lot of your patients before.
Queenie Bone: Never
Queenie Bone: You dun think you are special but you are special to me
Meimei4S: Thanks
Meimei4S: That’s sweet
Queenie Bone: That’s not sweet, that is that I think
Queenie Bone: doing all these things is very risky

Meimei4S: I know, it is risky

Queenie Bone: there must be sth that makes me brave enough to do so

Meimei4S: You sure you wanna risk it?

Queenie Bone: Not sure yet

Meimei4S: But you're risking it

Meimei4S: That's ok, I have my answer

Meimei4S: I'm happy and satisfied

Queenie Bone: I think it is better we sit down and talk

Meimei4S: Ok"

24. The Defendant insisted that the doctor-patient relationship had come to end after the final follow-up consultation on 3 October 2012. However, our attention was drawn by the Legal Officer to the following message exchanged between the Defendant and Madam A on 7 October 2012:

"Queenie Bone: Let see your foot today and then decide to stop the drug"

25. Apparently, the Defendant considered it necessary to see Madam A's foot before making the clinical decision to stop the medication despite he had put down the words "Case Closed FU PRN (i.e. follow-up when necessary)" in the medical record for the follow-up consultation on 3 October 2012.
26. The Defendant told us that this was not intended to be a formal consultation. However, the real point in our view is that the Defendant was still making in his capacity as a doctor arrangement to see Madam A before giving her specific medical advice. We are therefore unable to agree with the Defendant that the doctor-patient relationship had come to an end on 3 October 2012. It is particularly true when Madam A was prescribed with medication for a few days on 3 October 2012. Although there is insufficient evidence before us to tell precisely when the doctor-patient relationship had come to an end, there is no doubt in our minds that the Defendant and Madam A were still under a doctor-patient relationship on 7 October 2012.
27. When being asked by us, the Defendant admitted that he and Madam A had subsequently met to discuss about their relationship on 7 October 2012. The Defendant was adamant that he had told Madam A on more than one occasions that they should keep their relationship as friends.
28. However, we found in the Messages the following exchanges between the Defendant and Madam A on 8 and 9 October 2012:

“Queenie Bone: I miss u very much

...

Meimei4S: I wanna give you a big warm hu[g] and make you feel better

...

Meimei4S: You mean can't imagine when I'm nude? It'll be like a flat board

...

Queenie Bone: u know, this is the 20th day since we met. Everything happens so fast. It is unrealistic

...

Queenie Bone: 20 days. And everything turns upside down

...

Meimei4S: I treasure every moment with you and every little bit between us

Queenie Bone: That's very sweet. Me too

...

Queenie Bone: I know we are facing difficult moments. Everything happens too quick and we don't have much time to digest and internalize. I treasure every single moment to very (sic) with you, including the time that we text, not just the time that we see. I feel really bad when you are distancing yourself from me...”

29. Apparently, the Defendant wished to maintain the intimate relationship with Madam A and did not want Madam A to distance herself from him.
30. The Defendant also told us that he and Madam A had agreed in their meeting on or about 14 October 2012 to give each other 6 months' time to sort out their respective family matters. Meanwhile, they would continue to be friends.
31. This is however contradicted in our view by the following exchanges between the Defendant and Madam A on 15 and 16 October 2012:

“Queenie Bone: I love u

Meimei4S: Keep waking up and check on the phone

Meimei4S: I love you too

...

Queenie Bone: I will leave what I wanna tell you until I see you

Meimei4S: I understand that's the right direction

Queenie Bone: So we will still see each other

...

Meimei4S: We both married and had made promises to someone whom we

thought are appropriate, but apparently we both made wrong decisions

...

Queenie Bone: I believe we both love each other

Meimei4S: You don't have to choose me, you also can choose to be with your wife or other person, of course it hurts but I love you and understand your choice

...

Queenie Bone: I will cut my text frequency but that will not cut my love to u

...

Meimei4S: Need to act like friend ma...

Queenie Bone: Why are u so naughty?

Meimei4S: Coz I really really miss

Queenie Bone: I have said that when I missed u I know are also missing me.

...

Meimei4S: Do you still wanna see me tomorrow night?

Queenie Bone: Ok

Meimei4S: Meet at the beach?

..."

32. The Defendant also told us that Madam A and he had stopped texting each other after 17 October 2012. However, we noted the following exchanges between the Defendant and Madam A on 24 October 2012:

"Meimei4S: But I wanna let you know I will be there at the beach waiting for you half year later

Queenie Bone: Can I call you later? I am about to go to the airport

...

Queenie Bone: I am glad that u text me after one week of no contact.

Meimei4S: Can you call me 10 mins later?

Queenie Bone: Let me know when I can call u...

Queenie Bone: Miss u."

33. When being asked by us, the Defendant admitted that he had sex with Madam A some time at the end of November or early December 2012 after his trip to Beijing on 24 October 2012.

34. We also accept the Complainant's evidence that he recognized from listening to the Audio Recordings that the following conversation between Madam A and their mutual friend, Dr GANDOLFI:

“Friend: You made love just one time?
Madam [A]: Yeah just once
Friend: Just once?
Madam [A]: Just once
Friend: Did you sometimes kiss each other and touch each other?
Madam [A]: Oh yeah, a lot
Friend: A lot?
Madam [A]: Yeah
Friend: Did he touch your breast? Sometimes?
Madam [A]: Sometimes, not...yeah, you know, not all the time
Friend: Did you touch his leg or his shoulder?
Madam [A]: Yeah
Friend: Enough, hmmm”

35. We are satisfied on the evidence before us that after entering into a professional relationship with Madam A on 19 September 2012, the Defendant developed an intimate relationship with Madam A before the last follow-up consultation on 3 October 2012. We are also satisfied on the evidence before us that the Defendant permitted the intimate relationship with Madam A to deteriorate into an improper association of a sexual nature by the end of November 2012.
36. Through his Counsel, the Defendant argued that he never abused his professional position as a medical doctor for Madam A. Their doctor-patient relationship had come to an end on 3 October 2012. Whilst Madam A was still under his medical care, there was no improper relationship between him and Madam A. Nor was there any sexual relationship between him and Madam A whilst they were still under a doctor-patient relationship.
37. We do not agree. It is idle in our view to limit the disciplinary charge against the Defendant to what had happened during the time when Madam A was still under the medical care of the Defendant. In this connection, we agree with the Legal Officer that the relevant legal principles were stated in the Privy Council’s decision in *Barker v General Medical Council*; Privy Council Appeal No. 6 of 1971. In that case, the appellant, Dr Barker, was found guilty of professional misconduct because of his improper association with one Mrs Kerr, who was his former patient.
38. On appeal to the Privy Council, Counsel for Dr Barker argued that the forming of an improper association with a patient could not constitute serious professional misconduct unless it is in some way furthered by the existence of

the professional relationship. It was further argued that the improper association grew out of the German lessons that Mrs Kerr gave to Dr Barker and was not further in any way by the fact that Dr Barker was Mrs Kerr's doctor. Lord CROSS in delivering the judgment of the Privy Council referred to the following quotation from *De Gregory v GMC* [1961] AC 957 at 965-6 :

“It was suggested that a doctor, who started as the family doctor, might be in a different position when he became a family friend. His conduct on social occasions was to be regarded differently from his conduct on professional occasions. There must, it was said, be cogent evidence to show that he abused his professional position. It was not enough to show that he abused his social friendship. This looks very like a suggestion that he might do in the drawing-room that which he might not do in the surgery. No such distinction can be permitted. A medical man who gains the entry into the family confidence by virtue of his professional position must maintain the same high standard when he becomes the family friend...”

39. Counsel for the Defendant also drew our attention to the Australian case of *Re A Medical Practitioner* [1995] 2 Qd.R. 154 and argued that professional misconduct cannot be established on the facts of this case because the Defendant had never abused his position of trust as a medical doctor toward Madam A or the public.
40. We do not agree that this Australian case stood for such a wide legal proposition. Whilst abuse of position of trust toward a patient, in particular in the course of a doctor-patient relationship, is no doubt professional misconduct, it does not mean that professional misconduct can never be established in the absence of abuse of trust toward a patient or the public. In this connection, the Privy Council's decision in *Barker v General Medical Council*; Privy Council Appeal No. 6 of 1971 is apposite. In that case, Dr Barker was found guilty of serious professional misconduct and one of the proven allegations in support was that he frequently committed adultery with Mrs Kerr after the termination of doctor-patient relationship.
41. We acknowledge that the extent to which improper association between a medical doctor and patient may debase or degrade the standing and reputation of the medical profession would vary from case to case. However, we are firmly of the view that after entering into a professional relationship with Madam A, the Defendant had brought the medical profession into disrepute and debased the public confidence in its high standards and good reputation by

permitting his association with Madam A to deteriorate into an improper one of a sexual nature within a relatively short period of two to three months.

42. Nor do we accept the defence argument that improper personal relationship of a sexual nature had to be established before the doctor-patient relationship came to an end. It is idle in our view to sever a continuing improper personal relationship into “pre” and “post” termination of doctor-patient relationship.

43. Our conclusion is reinforced by the New Zealand High Court’s decision in *P v The Nursing Council of New Zealand* [2001] NZHC 7 at [44] & [45] and the Privy Council’s decision in *Barker v General Medical Council*; Privy Council Appeal No. 6 of 1971. And in the latter case, Lord CROSS had this to say of the law (at pp. 4-5 of his judgment) :

“...There is no real distinction to be drawn between the case of a doctor who asks a patient who is a married woman to give him German lessons and gradually becomes aware that they are falling in love with each other and the case of a doctor who is frequently asked to visit a patient who is a married woman while her husband is out of the house and gradually comes to realise that he is not being sent for because his professional services are needed but because the lady is in love with him. In either case a time must come when the doctor will be guilty of serious professional misconduct if he allows the association to continue...”

44. In any event, it is not disputed that Madam A was having a difficult time in her marriage with Mr B and the Defendant was well aware of that. Madam A also told us in her evidence that after her first follow-up consultation with the Defendant on 26 September 2012, she shared with her girlfriends that she “was very lucky to be treated by a capable young doctor”. Indeed, Madam A accepted under cross-examination that she “started to admire him very much” before the last follow-up consultation on 3 October 2012.

45. It is evident to us on the available evidence that Madam A soon became emotionally attached to the Defendant and sought comfort from him. Their personal relationship rapidly progressed to intimacy and eventually improper association of a sexual nature. The Defendant was no doubt riding on the emotional attachment of Madam A to him, which we find on the evidence before us to have been formed before the doctor-patient relationship came to an end.

46. In our view, a medical doctor's association with his patient could become improper when they showed undue affection to each other. Even if his patient sought opportunities of meeting him, he should be on his guard. He should shun any association with her altogether, rather than let the relationship become improper. By allowing his professional relationship with Madam A to deteriorate into an association which was not only improper but also of a sexual nature, the Defendant's conduct has fallen below the standards expected of registered medical practitioners in Hong Kong.
47. For these reasons, we find the Defendant guilty of misconduct in a professional respect as charged.

Sentencing

48. We need to 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 practice medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.
49. In this connection, it is essential in our view to maintain amongst members of the public a well-founded confidence that any medical doctor whom they consulted 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 practice medicine.
50. In sentencing the Defendant, our decision has to reflect the ethos and expectations of the community at large. We ought to ensure that only persons with a high standard of character and integrity could be allowed to have their names listed in the General Register. In this connection, a particularly serious view would be taken in respect of misconduct involving improper association of a sexual nature with patients.
51. There is no evidence that the Defendant had abused the trust of Madam A. It is nevertheless reprehensive in our view for the Defendant to ride on the emotional attachment of Madam A to him. Whilst it would be a circumstance of aggravation if the Defendant has abused the trust of Madam A and developed an improper relation of a sexual nature, the willingness or even enthusiasm on the part of Madam A is not in our view a mitigating factor in considering the conduct of the Defendant.

52. We accept that the Defendant is a caring and conscientious medical doctor. He also has full support from his forgiving wife, professional colleagues, patients and friends.
53. We are told in mitigation that the Defendant has learnt his lesson and he attended on 7 to 9 October 2019 the training course for “Maintaining Professional Boundaries” ran by The Clinic for Boundaries Studies of London. However, when we resumed this disciplinary inquiry on 18 November 2019, the Defendant still maintained the defence that his improper association with Madam A does not constitute misconduct in a professional respect because there was no abuse of her trust. We would expect the Defendant to understand that the boundary between a medical doctor and patient is not simply a matter for two persons. It must be maintained in order to uphold the confidence of the general public in the medical profession.
54. We need to emphasize that professional misconduct of this kind is of a very serious nature. It also has a serious effect upon the confidence of the general public in the medical profession. It is therefore necessary that we mark our disapproval in such a way as to state beyond doubt the gravity of such misconduct; to remind all medical doctors and to show the public that such conduct is not tolerated by the medical profession.
55. Having considered the nature and gravity of this case and what we have read and heard in mitigation, we order that the Defendant’s name be removed from the General Register for a period of one month. We have seriously considered whether the removal order should be suspended but we do not consider this is appropriate to do so.

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