

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr WONG Man Shun (王孟順醫生) (Reg. No.: M11813)

Date of hearing: 7 June 2022 (Tuesday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr LAU Chor-chiu, GMSM, MH, JP
Dr LI Fan-lan, Florence, Virginia
Mr WONG Hin-wing, Simon, MH
Mr HUI Man-kit, Patrick

Legal Adviser: Mr Edward SHUM

Defence Counsel representing the Defendant: Mr Victor HO instructed by
Messrs. L & L Lawyers

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The charges against the Defendant, Dr WONG Man Shun, are:

“That in or about 2016, he, being a registered medical practitioner, disregarded his professional responsibility to his patient(s), in that he:

(a) signed on five consent forms for the use of physical restrainer in residential care homes for the elderly (“Five Use of Restrainer Forms”) without proper assessment records made; and/or

(b) failed to take adequate steps to ensure information in the Five Use of Restrainer Forms were properly filled in before signing the same.

In relation to the facts alleged, either singularly or cumulatively, 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 27 March 1998 to the present. His name has never been included in the Specialist Register.
3. Briefly stated, the Secretary of the Medical Council (the “Council”) was informed by Social Welfare Department (“SWD”) vide its memo dated 15 February 2017 that during inspection of a residential care home operated by Peaceful Nursing Home Limited, 5 blank consent forms for the use of physical restraint (the “5 Forms”) were signed by one Dr CHAN without assessment record.
4. In response the allegation, Dr CHAN replied to the Chairman of the Preliminary Investigation Committee (“PIC”) of the Council by a letter dated 20 November 2018 that:-

“...The person in charge approached me through a friend of mine requesting the assistance of VMP (visiting medical practitioner) service to their Elderly Home. As I have no interest in providing the service to their institute, I referred Dr Wong Man Shun to them. Dr Wong who at that time being a part time locum in my clinic... I had no knowledge about the activities in the involved Elderly Home.

I had brought this case to Dr Wong Man Shun for his attention...”

5. By a letter dated 27 November 2020, Dr CHAN further submitted to the PIC through his solicitors that:-

“...The forms attached to the letter from the Social Welfare Department dated 5 June 2020 bear Dr. Chan’s chop but not his signature.

...

Dr. Chan himself did not sign any blank forms. He appreciates, however, that he should not have allowed Dr. Wong to use the chop of the business and for this he apologises to the Medical Council...”

6. By a letter dated 15 October 2021, the Defendant submitted to the PIC through his solicitors that:-

“...at the relevant period of time, Dr. Wong was a part-time locum in the clinic of Dr. Chan... Dr. Chan was requested to provide visiting medical practitioner service (“the Service”) to Peaceful Nursing Home Limited (“the Home”). As Dr. Chan did not wish to provide services to the Home, he instead referred the Home to Dr. Wong, his locum.

...Since or about early 2016, Dr. Wong visited the Home twice a month to provide the Service.

...As visits of Dr. Wong to the Home were not frequent, Dr. Wong was requested by the Home to let the Home have use of Restrainers Forms signed in blank in case urgent need to limit resident’s movement so as to minimize harm to self and/or other residents.

...The blank forms were provided to the Home on condition that before the use of each form, the Home has to notify Dr. Wong in advance and to let Dr. Wong have distance assessment of the medical condition of the relevant resident. The blank forms could not be used without prior approval by Dr. Wong.

...The 5 blank Forms were provided to the Home in or about early July 2016 and only for use in case of emergency and upon the Home fulfil the condition abovementioned. The blank form[s] have [n]ever been used by the Home.

...Dr. Wong confirmed that the signatures on the blank forms were his own signatures. As Dr. Wong was Dr. Chan's locum, it was the then practice of Dr. Chan to allow locums working for him from time to time to use his chop. It is in such circumstance, the chop of Dr. Chan was used.

...At the material time, Dr. Wong kept frequent communications with the Home. He was adequately being informed of the medical conditions of residents of the Home.

...Shortly after the occurrence of the incident, Dr. Wong has ceased to provide service to the Home.

...Dr. Wong is remorseful and he apologize[s] for his mistakes..."

7. Copies of the 5 Forms together with extracts from the Code of Practice for Residential Care Homes (Elderly Persons) (March 2013 revised edition) (the "Code for RCHEs") issued by SWD were placed by the Legal Officer before us today for our consideration.
8. At the beginning of this inquiry, the Legal Officer and Counsel for the Defendant jointly submitted to us a Statement of Agreed Facts which reads *inter alia* as follows:-

"...

2. *On or about 8 August 2016, five consent forms for the use of physical restrainer in residential care homes for elderly ("Use of Restrainer Forms") were found and seized by the inspector of the Licensing Office of Residential Care Homes for the Elderly at the Peaceful Nursing Home Limited ("the Home"). Four of the Use of Restrainer Forms only bore the signature of Dr WONG and the name chop of Dr CHAN... One other Use of Restrainer Form also bore the name of the residential care home for the elderly and*

the resident's name, sex, date of birth and bed number, with some of the boxes under the heading "(1) Problems of the Resident" checked.

...

4. *Since or about early 2016, Dr WONG visited the Home twice a month to provide the Service.*

5. *In or about early July 2016, Dr WONG provided Use of Restrainer Forms (including the five Use of Restrainer Forms referred to in paragraph 2 above) signed in blank and affixed with Dr CHAN's name chop (with Dr CHAN's permission) to the Home in case there was any urgent need for the use of physical restrainer on the residents.*

...

7. *In respect of the charges set out in the Notice of Inquiry dated 25 February 2022, it is admitted that Dr WONG, in or about 2016:*

(a) signed on five Use of Restrainer Forms without proper assessment records made; and

(b) failed to take adequate steps to ensure information in the five Use of Restrainer Forms were properly filled in before signing the same..."

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 each of the allegations 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 each of the disciplinary charge against him separately and carefully.

Findings of the Inquiry Panel

11. The Defendant admitted the factual particulars of the disciplinary charges (a) and (b) against him but it remains for us to consider and determine on the evidence whether he is guilty of misconduct in a professional respect.
12. It is evident to us from reading the “*Notes on Correct Use of Restraints*” extracted from the Code for RCHEs that assessments of the conditions of individual residents in respect of whom use of restraints are needed would be made by nurses or health workers in the RCHEs.
13. However, all registered medical practitioners ought in our view to have taken into account the results of assessment before indicating on the Consent Form(s) their agreement or disagreement to the proposed use of restrainers. For this reason, the signing of Consent Form(s) without proper assessment records being made thereon is prohibited.
14. By signing the 5 Forms without proper assessment records made, the Defendant had by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per disciplinary charge (a).
15. It is clearly stated in section 26 of the Code of Professional Conduct (2016 edition) that:-

“26.1 *Doctors are required to issue... certificates for a variety of purposes... on the basis that the truth of the contents can be accepted without question. Doctors are expected to exercise care in issuing certificates and similar documents...*

26.3 *Any doctor who in his professional capacity gives any certificate or similar document containing statements which are untrue, misleading or otherwise improper renders himself liable to disciplinary proceedings. The signing of blank certificates is prohibited by the Council.”*

16. It is incumbent in our view upon all registered medical practitioners to take adequate steps to ensure information in Use of Restrainer Forms are properly filled in before signing the same.
17. In failing to take adequate steps to ensure information in the 5 Forms were properly filled in before signing the same, the Defendant had by conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we also find him guilty of misconduct in a professional respect as per disciplinary charge (b).
18. We appreciate that locum doctors in Hong Kong may sometimes make use of the stationery like letterheads of their principals to issue certificates or similar documents to their patients. However, the Defendant was not asked to issue certificates or similar documents in his capacity as a locum doctor for and on behalf of Dr CHAN. Although this is strictly speaking not one of the disciplinary charges that the Defendant is facing, we do take exception to his wrongful use of Dr CHAN’s chop in the circumstances of this case.

Sentencing

19. In line with our published policy, we shall give the Defendant credit in sentencing for his frank admission and not contesting the issue of professional misconduct.
20. The Defendant has a previous disciplinary record in August 2014 relating to his criminal conviction back in 2012 for the offence of indecent assault on his female patient under the false pretext of relieving her pain. The Defendant’s name was ordered to be removed from the General Register for 1 year with suspension for 3 years. In addition, a warning letter was issued to the Defendant for his delay in reporting his criminal conviction.

21. We acknowledge that the present case is of a different nature. We accept the suspended removal order had already lapsed. But then again, we are entitled to take into consideration the undisputed fact that the Defendant had committed another misconduct in a professional respect during the suspension period. We need to ensure that the Defendant will not commit further misconduct in the future.

22. Taking into consideration the nature and gravity of the proven case against the Defendant and what we have read and heard in mitigation, we shall make a global order in respect of disciplinary charges (a) and (b) that the name of the Defendant be removed from the General Register for a period of 6 months. We further order that the removal order be suspended for a period of 18 months.

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