

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LEE Young King John (李揚敬醫生) (Reg. No.: M11433)

Date of hearing: 9 December 2019 (Monday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr YEUNG Hip-wo, Victor
Prof. CHAN Anthony Tak-cheung
Mr LAM Chi-yau
Mr LAI Yat-hin, Adrian

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr William CHAN of
Messrs. Mayer Brown

Senior Government Counsel (Ag.) representing the Secretary: Ms Carmen SIU

1. The amended charge against the Defendant, Dr LEE Young King John, is:

“That he, being a registered medical practitioner was convicted at the Kowloon City Magistrates’ Courts on 5 December 2018 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.”

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 23 July 1997 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 5 December 2018 of the offence of indecent assault and was later sentenced on 19 December 2018 to imprisonment for 9 months.
4. The Defendant subsequently lodged an appeal against his conviction but was dismissed by Deputy High Court Judge SHAM on 23 July 2019. A copy of the Judgment of the Court 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 13 March 2018.
6. Briefly stated, accompanied by her boyfriend, Madam X, then aged 24, consulted the Defendant at his clinic in To Kwa Wan. Apart from menstrual pain, Madam X's main complaint on that day was scoliosis for which she intended to ask the Defendant to refer her to see orthopaedic specialists at Duchess of Kent Children's Hospital.
7. There is no dispute that Madam X had consulted the Defendant on and off since she was 11 years old.
8. According to Madam X, whose evidence was accepted by the trial Magistrate and on appeal by Deputy High Court Judge SHAM, the Defendant indecently assaulted her by pressing both her breasts multiple times during the physical examination.
9. Details of how Madam X was indecently assault by the Defendant, were set out in the following paragraphs of the Judgment of Deputy High Court Judge SHAM:

“女事主的說法

9. 就李醫生檢查女事主脊椎時(那時女事主已把上衣扯高了),女事主向前彎腰,李醫生站於其右後方,首先右手伸進衣內並放在女事主的腹部,左手放在腰部,雙手同時向身體按壓。李醫生雙手慢慢向上移,沿途雙手同時按壓了大約六、七下。李醫生按壓時並沒有戴手套而是直接接觸女事主的皮膚。
10. 當右手按壓至胸口位置,李醫生把右手伸入女事主左邊的胸圍內按壓乳房四至五次,女事主感覺到其中兩隻手指分開並擦過她的乳頭,按壓時,李醫生詢問女事主「痛不痛」,女事主表示「不痛」。
11. 然後,李醫生轉過來左邊,以左手伸入女事主的右邊的胸圍內,按壓她的乳房,其中兩隻手指微微張開擦過乳頭,而李醫生的右手亦放在女事主背部,雙手同時向身軀內按壓四至五下。
12. 女事主站起來並對李醫生說「只係後腰痛,胸唔痛」;李醫生說「原來胸同上方唔痛」,之後又叫她再次彎腰。以上的按壓方式左右重複一次,期間亦有詢問女事主「痛不痛」,女事主每次都表示不痛。
13. 女事主站起來手指着腰部說「我係呢啲位痛,個胸唔痛嘅」,女事主向前彎腰,李醫生在女事主右後方用手掌按女事主的右腰肌肉,說「右腰肌肉凸起左」。
14. 跟着便是之前左右按壓乳房的動作再一次重複,按壓時,李醫生同樣詢問女事主「痛不痛」,女事主均表示不痛,那時女事主感到很懷疑、不安和有點驚慌。
15. 之後,李醫生叫女事主站起來向後彎,右手伸入她褲頭內約五厘米按她的小腹位置,左手放在後腰相對應的位置,雙手向身軀內按壓三至四下,詢問女事主「痛不痛」,女事主表示不痛。
16. 李醫生再次叫女事主向前彎腰,並站在其右後方重複一次剛才左右手按壓乳房的動作,每次按壓四至五下,期間亦詢問女事主「痛不痛」,女事主表示不痛。李醫生表示檢查完畢。
17. 按以上計算,一共四套重複動作(左右乳房按壓為一套),每邊乳房每次按壓四、五下,一共 16 至 20 下,總共 32 至 40 下。”

10. We also learnt from reading the Judgment of Deputy High Court Judge SHAM that the Defendant conducted the physical examination without the presence of a chaperone.

Findings of the Inquiry Panel

11. 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.

12. 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.”

13. Moreover, the Defendant does not dispute the conviction against him. We are therefore entitled to take the aforesaid conviction as proven against the Defendant.

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

Sentencing

15. The Defendant has a clear disciplinary record.
16. We shall give the Defendant credit for his cooperation in that he did not contest the disciplinary charge. 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 less extent than in other cases.
17. We bear in mind that the 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.

18. We fully agree with the trial Magistrate that the Defendant's wrongdoings were very serious and constituted an abuse of Madam X's trust on him as family doctor for 13 years. We are particularly concerned that the Defendant repeatedly pressed her breasts despite Madam X's reply that her chest was not in pain. However, we wish to emphasize that the fact that the Defendant conducted physical examination of Madam X without wearing gloves was of no consequence to our decision.
19. It is clearly stated in paragraph 27.2 of the Code of Professional Conduct (2016 edition) (the "Code") that a particularly serious view will likely be taken in respect of offences involving indecent behaviour.
20. 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.
21. 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.
22. Nearly 21 months have elapsed since the incident, we would certainly expect that the Defendant to look back and reflect on his wrongdoings. We need to emphasize that insight is not to be equated with remorse. However, there is nothing in mitigation to show us that the Defendant has insight into his wrongdoings.
23. We agree that the presence of chaperone in consultation with female patients and working under supervision by another medical doctor may reduce the opportunity of the Defendant repeating the same or similar wrongdoings in the future. However, unless the Defendant has demonstrated genuine insight into his wrongdoings, we cannot safely allow him to remain in medical practice despite the precautions and remedial measures submitted to us in the course of mitigation.
24. But then again, we accept that the Defendant was a conscientious and compassionate doctor who all along provided primary medical care to the elderly and needy at low costs.

25. Having considered the nature and gravity of this case and what we have heard and read in mitigation, we order that the name of the Defendant be removed from the General Register for a period of 3 months.
26. We have considered carefully whether the 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.

Remark

27. We like to emphasize that any intimate physical examination of a patient is recommended to be conducted in the presence of a chaperone to the knowledge of the patient. If the patient requests to be examined without a chaperone, it is also recommended to record the request in the medical records.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
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