

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 Yiu Fai (陳耀輝醫生) (Reg. No.: M12120)

Date of hearing: 22 September 2023 (Friday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel  
(Chairperson of the Inquiry Panel)  
Dr Pierre CHAN  
Dr TAM Sau-man, Barbara  
Mr WONG Hin-wing, Simon, MH  
Ms Asha Rani SHARMA

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendant: Ms Maureen LIU  
of Messrs. Howse Williams

Government Counsel representing the Secretary: Miss Cassandra FUNG

1. The charges against the Defendant, Dr CHAN Yiu Fai, are:

*“That in or about December 2021, he, being a registered medical practitioner, disregarded his professional responsibilities to his patient(s), in that he:*

- (i) signed on 30 undated assessment and consent forms (“the Forms”), without proper assessment records made thereon, each for applying the use of physical*

*restraints in residential care home(s) on the resident named therein; and*

- (ii) *failed to take any or adequate step(s) to ensure the information in the Forms were properly filled in for each of the named resident, prior to signing the Forms in (i) above.*

*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 13 January 1999 to the present. His name has never been included in the Specialist Register.
3. Briefly stated, the Secretary of the Medical Council (“Council”) was informed by the Social Welfare Department (“SWD”) vide a letter dated 17 January 2022 that during inspection of a residential care home for the elderly of name 嘉誠護老院, 30 blank consent forms for the use of physical restraint (the “30 Forms”) were signed by the Defendant without any details of his assessment records.
4. Copies of the 30 Forms together with extracts from the Code of Practice for Residential Care Homes (Elderly Persons) (January 2020 revised edition) (“the Code for RCHEs”) issued by SWD were placed before us today for our consideration.
5. At the beginning of the inquiry, the Legal Officer for the Secretary and the Solicitor representing the Defendant jointly submitted a Statement of Agreed Facts which reads inter alia as follows:

“...

2. *In or about December 2021, Dr CHAN:-*

- (i) *signed on 30 undated assessment and consent forms (“the Forms”), without proper assessment records made*

*thereon, each for applying the use of physical restraints in residential care home(s) on the resident named therein; and*

*(ii) failed to take any or adequate step(s) to ensure the information in the Forms were properly filled in for each of the named resident, prior to signing the Forms in (i) above.”*

### **Burden and Standard of Proof**

6. 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.
7. There is no doubt that each of the allegations made against the Defendant here is serious. 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 charges against him separately and carefully.

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

8. 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.
9. From reading the extracts from the Code of RCHEs, it is evident to us that assessments of the conditions of individual residents in respect of whom use of restraints are needed would be made by nurses/health workers/allied health professionals in the RCHEs.

10. However, all registered medical practitioners ought in our view to have taken into account the results of assessment before indicating in the Assessment and Consent Form(s) their agreement or disagreement to the proposed use of restrainers. For these reasons, the signing on the Assessment and Consent Form(s) without proper assessment records being made is prohibited.
11. By signing on the 30 Forms without proper assessment records made therein, 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).
12. 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.”*
13. It is incumbent in our view upon all registered medical practitioners to take adequate steps to ensure information in Assessment and Consent Forms are properly filled in before signing the same.
14. In failing to take adequate steps to ensure information in the 30 Forms were properly filled in before signing the same, 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 (b).

## **Sentencing**

15. The Defendant has a clear disciplinary record.
16. 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.
17. The Defendant told us that he has resigned from rounding elderly homes. We accept that the Defendant has learnt his lesson and the risk of re-offending should be low.
18. We have considered the mitigation letters as submitted and his social contribution activities.
19. The offences of which the Defendant was convicted are serious. We must emphasize that signing on blank assessment and consent forms is strictly prohibited.
20. Taking into consideration the nature and gravity of the 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 Defendant's name be removed from the General Register for a period of 1 month, and that the operation of the Order shall be suspended for a period of 6 months, subject to the following condition:

The Defendant shall complete continuing medical courses in medical ethics to be pre-approved by the Chairman of the Medical Council within the suspension period equivalent to 3 CME points. The Defendant shall submit evidence of certification of the CME points by a CME Accreditor approved by the Council within one month after the expiry of the suspension period.

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