

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr HO Kin Ming (何健明醫生) (Reg. No.: M06502)

Date of hearing: 5 May 2023 (Friday) (Day 1),
21 May 2023 (Sunday) (Day 2),
11 June 2023 (Sunday) (Day 3) and
20 August 2023 (Sunday) (Day 4)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr YEUNG Hip-wo, Victor
Dr LEUNG Hon-fai, Henry
Ms HUI Mei-sheung, Tennessy, MH, JP
Ms LAU Sze-wan, Serena, MH, JP

Legal Adviser: Mr Stanley NG

Defence Counsel representing the Defendant: Ms Deanna LAW as instructed by
Messrs. Howse Williams

Legal Officer representing the Secretary: Ms Susanna KU of counsel as
instructed by Department of Justice

1. The charges against the Defendant, Dr HO Kin Ming, are:

“The particulars of the complaint are that he, being a registered medical practitioner, engaged in acts of indecency in that he:

- (a) on 5 December 2007, in Operating Theatre 2 at North District Hospital, touched Complainant A on the left area of her breast several times inappropriately and without her consent;*
- (b) on 3 March 2010, in Room 5 of the Operating Theatre at North District Hospital, touched Complainant E on the left area of her breast inappropriately and without her consent;*
- (c) on a date in March 2010, in his office at North District Hospital, hugged Complainant E and touched her hand inappropriately and without her consent;*
- (d) on 6 December 2016, in an Operating Theatre at North District Hospital, hugged Complainant D from the back inappropriately and without her consent; and*
- (e) on multiple occasions between July 2016 and June 2017, in Operating Theatre at North District Hospital, placed his hand on Complainant D’s back and upper arm inappropriately and without her consent.*

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 2 July 1987 to the present. His name has been included in the Specialist Register under the specialty of Anaesthesiology since 4 March 1998.
3. By a letter dated 13 August 2019, the Hospital Chief Executive of North District Hospital (“HCE of NDH”) referred to the Medical Council a case regarding complaints made by some doctors in New Territories East Cluster against the Defendant for having committed acts of sexual harassment in the workplace

from 2007 to 2018. HCE of NDH said that investigation was conducted within Hospital Authority (“HA”) and it was concluded that the allegations against the Defendant on touching various body parts and hugging were substantiated.

4. By letters dated 9 December 2019 and 11 August 2020, HCE of NDH provided to the Medical Council details of the complaints and extracts of interview notes in respect of three respective female complainants, namely Complainant A, Complainant E, and Complainant D.
5. In these proceedings, Complainant A is the subject complainant as referred to in charge (a). Complainant E is the subject complainant as referred to in charges (b) and (c). Complainant D is the subject complainant as referred to in charges (d) and (e).
6. At the beginning of the inquiry, we made an Anonymity Order in respect of all three complainants, hence we will refer them hereinafter as Complainant A, Complainant E and Complainant D.
7. According to the Statement of Agreed Facts dated 5 May 2023, the Defendant agreed, inter alia, that he was employed as a clinical staff in the HA from 1 February 1994 to 18 April 2019, and in February and March 2010 inclusively, his office was situated at NDH.

No-case Submission

8. At the conclusion of the Secretary’s case, the Defendant made a no-case submission in respect of charge (c) and charge (e).
9. We already ruled that there was a case to answer in respect of both charges, and these are our reasons.
10. In respect of charge (c), the Defendant’s submission was mainly that according to the evidence of Complainant, the incident happened in the month of February 2010, and not the month of March 2010 as so pleaded, therefore there was no case to answer. We cannot agree with the Defendant’s submission. We agree with the legal officer that time is not of the essence here in charge (c). We also accept all the submission of the legal officer that no prejudice was caused to the Defendant.

11. In respect of charge (e), the Defendant made two points. The first one was briefly made, which was that charge (e) was duplicitous as the dates mentioned therein overlapped with the date mentioned in charge (d). We do not see how the attack based on duplicity could be made out. We accept what the legal officer submitted that the act pleaded in charge (d) is totally different from the acts pleaded in charge (e). The second point made by the Defendant was on sufficiency of evidence. We take the view that, taking the Secretary's evidence to its highest, there is sufficient evidence to prove what is pleaded in charge (e).

Burden and Standard of Proof

12. 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.
13. 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 charges against him separately and carefully.

Findings of the Inquiry Panel

14. The charges are framed as follows:

“The particulars of the complaint are that you, being a registered medical practitioner, engaged in acts of indecency in that you: ... In relation to the facts alleged, either singularly or cumulatively, you have been guilty of misconduct in a professional respect.”

15. The legal officer argues that the phrase “acts of indecency”, although particularized, is not an element of the charges. The legal officer submits that the phrase “acts of indecency” is a term to name all the five acts only (i.e. the acts as particularized in charges (a) to (e)), and the individual charges themselves only use the word “inappropriately”, and not “indecently”.

16. The legal officer cited one sentence from paragraph 48 of the judgment given by Hon McWalters J in the case of *Dr Wong Tak Lun v The Medical Council of Hong Kong*, CACV 57/2013, unreported, 21 February 2014 in support, which reads:

“The words ‘failed to exercise due care’ are not an element of the offence and do not need to be included in the pleading of the offence.”

17. This one sentence as cited by legal officer is however followed by these words in the remaining part of the same paragraph 48:

“But, when they are included, they indicate to the offender that his prosecution is based upon his misconduct having been committed through, essentially, neglect, rather than an intent characterized by mala fides, such as dishonesty. Punishing him for such an intent cannot be done without amending the charge, such as by deleting from it the words ‘failed to exercise due care’, and replacing them with simply a bare allegation of a failure to comply with section 26.4 of the Code of Professional Conduct. Such an amendment would then have the effect of alerting the offender to the fact that the respondent was allowing for the possibility of making findings other than that the misconduct was a consequence was a failure to exercise due care.”

18. Quite opposite to what legal officer argues, the remaining part of the said paragraph 48 clearly suggests that “failed to exercise due care” was an element of the offence in question, unless deleted.

19. In our present case, since the phrase “acts of indecency” is pleaded, and never deleted, it must form part of the elements of the charges. The acts as pleaded in charges (a) to (e), though use the word “inappropriately” in each of them, are nevertheless all grouped under the phrase “acts of indecency”, hence we do not think “acts of indecency” can be ignored.

20. As to how to interpret the phrase “acts of indecency” in these charges, the Defendant invites us to make reference to the case of *R v Court* [1989] AC 28, in which the UK House of Lords explained the elements of the criminal offence of “indecent assault”. The legal officer also agrees that we should make reference to the legal principles laid out in *R v Court* if our ruling is that “acts of indecency” form part of the elements of the charges.

21. We find it correct when interpreting the element of “acts of indecency” in respect of all the charges to make reference to *R v Court*. We gratefully adopt what Lord Ackner said in the case, at pages 41- 46 therein, as follows:

“It was common ground before your Lordships, and indeed it is self evident, that the first stage in the proof of the offence is for the prosecution to establish an assault. The ‘assault’ usually relied upon is a battery, the species of assault conveniently described by Lord Lane C.J. in Faulkner v. Talbot [1981] 1 W.L.R. 1528, 1534 as ‘any intentional touching of another person without the consent of that person and without lawful excuse. It need not necessarily be hostile or rude or aggressive, as some of the cases seem to indicate.’ But the ‘assault’ relied upon need not involve any physical contact but may consist merely of conduct which causes the victim to apprehend immediate and unlawful personal violence. In the case law on the offence of indecent assault, both categories of assault feature.

The judge in assisting the jury in his summing up as to the meaning of an indecent assault adopted, inter alia, a definition used by Professor Glanville Williams, Textbook of Criminal Law, 2nd ed. (1983), p. 231: “‘indecent’ may be defined as ‘overtly sexual.’” This is a convenient shorthand expression, since most, but not necessarily all, indecent assaults will be clearly of a sexual nature although they, as in this case, may have only sexual undertones. A simpler way of putting the matter to the jury is to ask them to decide whether “right-minded persons would consider the conduct indecent or not.” It is for the jury to decide whether what occurred was so offensive to contemporary standards of modesty and privacy as to be indecent.

It also was common ground before your Lordships, as it was in the Court of Appeal, that if the circumstances of the assault are incapable of being regarded as indecent, then the undisclosed intention of the accused could not make the assault an indecent one. The validity of this proposition is well illustrated by Reg. v. George [1956] Crim.L.R. 52. The basis of the prosecution's case was that the defendant on a number of occasions removed a shoe from a girl's foot and that he did so, as indeed he admitted, because it gave him a kind of perverted sexual gratification. Counsel for the prosecution submitted that an

assault was indecent if it was committed to gratify an indecent motive in the mind of a defendant, even though there was no overt circumstances of indecency. Streatfeild J. ruled that an assault became indecent only if it was accompanied by circumstances of indecency towards the person alleged to have been assaulted, and that none of the assaults (the removal or attempted removal of the shoes) could possibly amount to an indecent assault.

Again it was common ground that if, as in this case, the assault involved touching the victim, it was not necessary to prove that she was aware of the circumstances of indecency or apprehended indecency. An indecent assault can clearly be committed by the touching of someone who is asleep or unconscious.

...

The assault which the prosecution seek to establish may be of a kind which is inherently indecent. The defendant removes against her will, a woman's clothing. Such a case, to my mind, raises no problem. Those very facts, devoid of any explanation, would give rise to the irresistible inference that the defendant intended to assault his victim in a manner which right-minded persons would clearly think was indecent. Whether he did so for his own personal sexual gratification or because, being a misogynist or for some other reason, he wished to embarrass or humiliate his victim, seems to me to be irrelevant. He has failed, ex hypothesi, to show any lawful justification for his indecent conduct. This, of course, was not such a case. The conduct of the appellant in assaulting the girl by spanking her was only capable of being an indecent assault. To decide whether or not right-minded persons might think that assault was indecent, the following factors were clearly relevant - the relationship of the defendant to his victim - were they relatives, friends or virtually complete strangers? How had the defendant come to embark on this conduct and why was he behaving in this way? Aided by such material, a jury would be helped to determine the quality of the act, the true nature of the assault and to answer the vital question - were they sure that the defendant not only intended to commit an assault upon the girl, but an assault which was indecent - was such an inference irresistible? For the defendant to be liable to be convicted

of the offence of indecent assault, where the circumstances of the alleged offence can be given an innocent as well as an indecent interpretation, without the prosecution being obliged to establish that the defendant intended to commit both an assault and an indecent one, seems to me quite unacceptable and not what Parliament intended.

...

I, therefore, conclude that on a charge of indecent assault the prosecution must not only prove that the accused intentionally assaulted the victim, but that in so doing he intended to commit an indecent assault i.e. an assault which right-minded persons would think was indecent. Accordingly, any evidence which tends to explain the reason for the defendant's conduct, be it his own admission or otherwise, would be relevant to establish whether or not he intended to commit, not only an assault, but an indecent one...

...

On a charge of indecent assault the prosecution must prove: (1) that the accused intentionally assaulted the victim; (2) that the assault, or the assault and the circumstances accompanying it, are capable of being considered by right-minded persons as indecent; (3) that the accused intended to commit such an assault as is referred to in (2) above."

Charge (a)

22. Complainant A gave evidence at the inquiry.
23. Complainant A joined the HA on 1 July 2005 as an intern. She started her anaesthetic training since 1 July 2006. She was resident trainee of Department of Anaesthesia, NDH from 1 January 2007 to 31 December 2007.
24. On 5 December 2007, Complainant A was assigned to participate in an operation at Operating Theatre 2, NDH. During the operation, her role was the junior list anaesthetist while the Defendant was the senior list anaesthetist. The Defendant as her supervisor would stand there to observe and supervise her. Complainant A told us that at a point in time during the operation (general

anaesthesia induction), she was standing in a position facing the patient's head lying on the operation table. The Defendant was the only person standing on her left. They were standing close to each other. She was trying to insert a medical device, namely C-Trach LMA, into the patient's pharynx. During the course when she was holding the device with her right hand, with her left hand positioned on patient's head and mouth, she felt the Defendant used the back of his right hand to pat on her left breast for two episodes, and several times during each episode. She described the patting as very brief ("拍個過程好短"), there was no staying of his hand on her breast ("無停留"), and not vigorous ("都唔係大力嘅"). She also said there should be no less than one second in between the two episodes ("應該唔止一秒"). When asked by the Defendant's counsel, she said the patting had contact with her left nipple area, which was at the middle of her left breast ("係會掂到我乳頭位置"; "係中間位置"). Complainant A said the patting by the Defendant on her left breast was intentional, and she never consented to it. Complainant A informed a Dr KOO and a Dr LAI on the same day and her senior, a Dr CHU, on the next day about the incident. She also recorded the incident in her diary.

25. The original of Complainant A's diary was shown to us at the inquiry. The diary was in the form of a booklet. The relevant diary entry page is the one with date "5/12" (i.e. 5 December 2007), followed by the next diary entry page of date 15 December 2007. The booklet appears intact. The relevant page with date "5/12" is part of and bound to the booklet, and does not appear to be some loose leaf subsequently added to the booklet. Despite what Complainant A wrote in her witness statement dated 22 February 2023 that she recorded the incident in her diary on 5 December 2007, she clarified with us that it was possible that she recorded the incident on a date after 5 December 2007 but before 15 December 2007. We accept what Complainant A told us. There is nothing to undermine the truthfulness of the diary entry "5/12". We accept the diary entry "5/12" as true and contemporaneous record.
26. We bear in mind that this incident took place long time ago in 2007, and usually for cases with such long lapse of time the memory of witness may not be as accurate. Complainant A told us that whether the Defendant had any conversation with her before, during or after the patting she could not remember now. We accept that it is normal because of the long lapse of time for her not to have remembered minor details such as these. However, when it comes to the core matters i.e. about the patting on her left breast by the Defendant, she can still remember very clearly. Her evidence in this respect is consistent all along

with diary entry “5/12”, and she even reported the matter to other doctors on that day and the day after. Her evidence in these core matters was unshaken during cross-examination. We have the opportunity to examine the demeanour of Complainant A when giving evidence. Her evidence was direct, straightforward and consistent. We do not see any part of her testimony was exaggerated. We find her evidence honest and reliable on the overall. We accept all of what she told us at the inquiry as to the core matters. We find that the Defendant had used the back of his right hand to pat on Complainant A’s left breast for two episodes, and several times during each episode, in the way as described to us by Complainant A.

27. At all material times, the Defendant and Complainant A were colleagues of each other. The Defendant was the superior of Complainant A. They were not close friends or acquaintances at all. Complainant A told us that during the insertion of C-Trach LMA on 5 December 2007, she had not encountered any difficulty, which would require the assistance of the Defendant. It was a smooth procedure. She said there was no need for the Defendant to pat her on her left breast. Even if there was a need, the Defendant could have given verbal instructions to her instead. We agree that there was no reason why the Defendant had to pat on the left breast area of Complainant A. No difficulty or emergency situation was encountered with the insertion of C-Trach LMA on that day. It was a smooth procedure. We therefore do not accept that the patting on Complainant A was done out of emergency or in difficulty situation with the insertion of C-Trach LMA. Even if there was difficulty or an emergency encountered, but which was not the case, that was also no reason for patting on the breast area of a female colleague. The Defendant could have verbally instructed Complainant A instead. The breast area is a very private part to a female.
28. As said, the patting not just happened once, but in two episodes, and there were several pats in each episode. The patting could not be accidental. In our view, the patting was intentional and targeted at Complainant A’s breast area.
29. The patting on Complainant A’s left breast in two episodes, and several times during each episode, and without her consent, would appear to right-minded persons to be indecent. We are of the view that the Defendant intended to commit such indecent acts.

30. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find him guilty of misconduct in a professional respect under charge (a).

Charges (b) and (c)

31. We shall deal with charge (c) first, and then charge (b).
32. Complainant E gave evidence via video link at the inquiry.
33. In 2010, Complainant E was a first year resident trainee of Department of Anaesthesia, NDH. The Defendant was her supervisor.
34. Complainant E told us that on a day in February 2010, and it was after work, the Defendant requested her to prepare PowerPoint slides at his office. She proposed to prepare the slides at her workstation in the common anesthetic staff room instead. The Defendant told her that he had already opened the PowerPoint slides on his computer in his office and insisted that she worked with him at his office. After she went into the Defendant's office, she sat on the chair, facing the desk with a desktop computer on it. She told us that the Defendant at first was standing inside the office, holding on to the door handle from inside, and then closing the door. She said she was scared when the Defendant closed the door. She said she could not remember what type of PowerPoint work she was asked to assist on. She could only remember that the PowerPoint work was the Defendant's personal work. She said the chair had wheels. The top of the chair's back was to the level of or below her shoulders. She said she was not tall, and therefore she was sitting towards the front part of the seat. She said the Defendant was standing behind her chair, on her right side. She said as she proceeded to prepare the PowerPoint slides, the Defendant suddenly hugged her from the back and touched her right hand. What she meant by that, she described to us that she felt the Defendant's left upper limb touching her left shoulder area; the Defendant's chest area touching her back; the Defendant's right hand placing on the back of her right hand, with fingers of the Defendant's inserting through her fingers, and her right hand was holding the computer mouse on the desk at the time; and the Defendant's head placing next to the right side of her head, and she could feel the Defendant's chin touching her right shoulder. All these lasted for less than 5 seconds, and she immediately stood up and left the office. She said she did not consent to these hugging and touching. ("1st Incident")

35. We bear in mind that the 1st Incident took place long time ago in 2010, and usually for cases with such long lapse of time the memory of witness may not be as accurate. We accept that due to the long lapse, Complainant E might not be able to remember some non-essential or minor details. However, in relation to the core and essential matters i.e. how the Defendant hugged her and touched her right hand, she can still remember clearly. Her evidence as to these core matters was unshaken during cross-examination. We had the opportunity of examining Complainant E's demeanour through video link. Her evidence was direct, straightforward and consistent. We do not see any part of her testimony was exaggerated. We find her evidence honest and reliable. We accept all of what she told us at the inquiry as to these core matters in relation to the 1st Incident.
36. At all material times of the 1st Incident, the Defendant and Complainant E were not close friends or acquaintances at all. There were only colleagues of each other, the Defendant being Complainant E's supervisor. In our view, there was no reason why the Defendant had to close his room door, particularly when a female colleague who was not any close acquaintance or friend of his was asked to stay alone in his room with him. The way he hugged her from behind and touched her hand (i.e. with his left upper limb touching her left shoulder area; his chest area touching her back; his right hand placing on the back of her right hand, with his fingers inserting through her fingers, and her right hand was holding the computer mouse on the desk at the time; and his head next to the right side of her head, with his Defendant's chin touching her right shoulder) clearly offended the contemporary standards of modesty and privacy, and right-minded persons would clearly consider the acts indecent. There was no reason why the Defendant had to hug Complainant E and touch her in this manner if his real intention was to guide her to work on the PowerPoint slides. We take the view that the Defendant's real intention was to indecently hug and touch Complainant E, and this was all done without her consent.
37. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find him guilty of misconduct in a professional respect under charge (c).
38. Another incident happened on 3 March 2010. Complainant E said that on this day she was assigned to participate in a gynecological operation in Operating Theatre 5 of NDH. After the anesthetic induction finished at around 11:33 a.m.,

her supervisor Dr CHEN continued to stay with her in the Theatre. At around 11:40 a.m., the Defendant came into the Theatre and informed her about her updated work arrangement for that day. The Defendant then left the Theatre and returned for the second time at around 11:45 a.m. through the back door of the Theatre. At the same time, Dr CHEN left the Theatre from another door. The Defendant then found that she had wrongly set the cycling time of blood pressure monitor setting for the patient, and he started to reprimand her for that. The Defendant summoned her to the area between the patient's bed and monitors, where he pointed out the mistake to her. At that time, she did not want to stand too close to the Defendant, so she remained 1½ arms' reach distance to avoid any contact. The Defendant continued to reprimand her for the wrong setting of the blood pressure monitor. The Defendant suddenly stepped forward and with quick hand movements. She felt the Defendant's right hand sweep across her left breast and stayed for a short while. She said they then had eye contacts for around 1 to 5 seconds. She looked at the Defendant in shock. She said the Defendant did not look remorseful or embarrassed. The Defendant looked smug (“我覺得佢個樣係得戚嘅”) and she felt that the Defendant knew what he just did. The Defendant did not offer an apology or step back at all. The Defendant then said to her “醒目 d la 你” and told her to leave the Theatre and take a quick lunch. She said she never consented to the Defendant's sweeping his right hand across her left breast. (“2nd Incident”)

39. Complainant E expressed her distress to her mentor Dr SO about the 2nd Incident at around 2 p.m. on that day. She also recorded the 2nd Incident in her diary on the same day. Only a copy of the diary was provided. The original could not be shown to us as Complainant E was in Vancouver, and she said the original was at her home in Hong Kong. The diary was written on a piece of paper, on both sides.
40. At the inquiry, Complainant E told us that the Defendant's right hand somehow stayed on her breast. However, no mention of “staying” on her breast was mentioned in her diary, which was supposed to be contemporaneous record. However, all that was recorded was “I felt his R hand sweep across my L breast”. We are not convinced that there was any staying of the Defendant's right hand on her left breast.
41. Complainant E agreed that the Defendant at the time was angry and reprimanding her, and had a lot of hand movements and gestures. Given that the Defendant was angry and had a lot of hand movements and gestures, we

cannot be certain if in the heat of the moment the touching was intentional or merely accidental. Even the Defendant was described by Complainant E as looking smug, not remorseful and not embarrassed after the sweeping on her breast, it is still not conclusive to say that the sweeping was intentional or accidental, one way or another. We will therefore acquit the Defendant of charge (b).

Charges (d) and (e)

42. Complainant D gave evidence during the inquiry.
43. Complainant D joined the HA on 1 July 2014. From 1 July 2016 to 30 June 2017, she was the resident trainee in anaesthesiology at NDH. At all material times, the Defendant was the Senior Anaesthetist at NDH. The Defendant supervised the work of Complainant D.
44. Complainant D told us that on 6 December 2016, she was assigned to participate in an operation (laparoscopic resection of colon) on a 62-year old female patient at Operating Theatre of NDH. During anesthetic induction, after endotracheal tube insertion, she said the Defendant hugged her from the back with the excuse of reaching equipment (reservoir bag of anaesthetic circuit). The Defendant stood behind her and passed the reservoir bag from his left hand to his right hand in front of her body, such that her body was encircled by his arms, with his upper trunk touching her back. She also said maybe the Defendant's upper arm also had contact with her, but not the Defendant's forearms and hands (“咁可能佢上臂都有掂到我囉，但係你問我，你話個前臂同埋手呢，就一定掂唔到我…係啦，即係個前臂就有掂到我，係喇”). She also agreed during cross-examination that the hugging was not vigorous (“唔會好大力”). She said it was touching, not pressing (“係，掂到…唔係壓住”). She was immobilized at the time as she was securing the position of endotracheal tube by holding it with both hands during its fixation. The hugging was brief and stopped before she could verbally react. She also said that she did not consent to the said hugging. She was angry when she noticed such act. It was not an accidental touch as it was unnecessary for him to reach that equipment at that particular time. Even if he had to reach for that equipment, he could have asked her to move to the side or she could reach the equipment herself. (“6/12/2016 Incident”)

45. Complainant D said she expressed her distress to the Operation Theatre Assistant after the event. When she went for tea break, she shared it with other female colleagues in the tea room. She had also sent a message via Whatsapp at time 3:21 p.m. on the same day.
46. As to the other incidents, Complainant D told us that these other incidents took place on multiple occasions between July 2016 to June 2017. She said while the Defendant was talking to her on these multiple occasions, he would place his hand on her back and upper arm without her consent. She said there were about 5 to 10 of these occasions. (“Other Incidents”)
47. In around April to June 2017, Complainant D informed the Chief of Service of NDH of the 6/12/2016 Incident and the Other Incidents.
48. We have looked at the Whatsapp record, which appears to be a photo of a phone screen. There was record of entries sent out on date “6 Dec 2016” at “3:21 p.m.” One entry reads “I’m so angry now”. Another entry reads “I suffered from salty pig hand from hkm again”. Complainant D told us that “hkm” in the entry means the Defendant. There was really nothing in cross-examination which could undermine the authenticity and contemporaneity of the Whatsapp record. We accept the Whatsapp record as authentic and contemporaneous.
49. We bear in mind that the 6/12/2016 Incident happened quite some time ago, and usually the memory of witness may not be too accurate due to the lapse of time.
50. As regards the 6/12/2016 Incident, we accept that due to the lapse of time, Complainant D might not be able to remember every non-essential or minor details. However, in relation to the core and essential matters, for instance, how the Defendant hugged her from the back and without her consent (i.e. passed the reservoir bag from one hand to the other, thereby with his hands circling her body), she could remember clearly. Her evidence in this respect was direct, straightforward and consistent. We do not see any part of her testimony was exaggerated. We find her evidence honest and reliable. We find that the Defendant had hugged her from the back without her consent.
51. We do not accept that the hugging from the back was necessary. The reservoir bag was already not in use at the time. The patient was not in respiratory desaturation. There was no reason that the Defendant had to choose that particular moment, when Complainant D was busy with both her hands, to place

the reservoir bag back to its original position. It was very unusual that the Defendant had to choose this moment. The Defendant could have done it later or he could have asked Complainant D to do it later. The Defendant should know that if he chose that moment to place the reservoir bag back to its original position in the way he did, his hands would clearly encircle the body of Complainant D, and there would inevitably be body contacts. This was exactly what happened, in that his upper arms and his upper trunk had contacts with Complainant D. Complainant D was not even close friend or acquaintance with the Defendant. The situation simply did not permit the Defendant to have such close contact with Complainant D. We are satisfied that the act of hugging Complainant D from the back offended the contemporary standards of modesty and privacy, which right-minded persons would clearly think was indecent. We are satisfied that the Defendant intended to commit such indecent act on Complainant D.

52. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find him guilty of misconduct in a professional respect under charge (d).
53. As to the Other Incidents, Complainant D said that there were 5 to 10 such incidents in which the Defendant would touch her hand and back. Out of these 5 to 10 incidents, Complainant D could not tell us exactly where each of the incidents took place, which day it took place, who else was present apart from herself and the Defendant, which part of her back or hand was touched by the Defendant, and how the Defendant touched her. Given that touching on back or hand are not acts that are inherently indecent, we are not satisfied on the evidence that the Defendant intended to indecently touched Complainant D. For these reasons, we acquit the Defendant of Charge (e).

Sentencing

54. The Defendant has a clear disciplinary record.
55. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant but to protect the public from persons who are unfit to practise medicine and to maintain public confidence in the medical profession by upholding its high standard and good reputation.

56. We have considered the certificates and commendation letters submitted by the Defendant.
57. The gravamen of the disciplinary offences is serious. The Defendant was the supervisor of all the Complainants A, E and D at all material times. This was clearly also an abuse of his fiduciary position. We take the view that charge (a) is particularly serious as there was patting of Complainant A's breast a number of times.
58. Taking into consideration the nature and gravity of the disciplinary charges for which the Defendant is convicted and what we have heard and read in mitigation, we make the following orders:
- (i) In respect of charge (a), the name of the Defendant be removed from the General Register ("GR") for a period of 6 months;
 - (ii) In respect of charge (c), the name of the Defendant be removed from the GR for a period of 4 months;
 - (iii) In respect of charge (d), the name of the Defendant be removed from the GR for a period of 4 months; and
 - (iv) The above removal orders to run concurrently.
59. We have considered whether the removal orders should be suspended but we do not consider this is appropriate to do so.

Prof. TANG Wai-king, Grace, SBS, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong