

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr HO Kwok Cheung (何國璋醫生) (Reg. No. M15549)

Date of hearing: 11 September 2013

1. The charge against the Defendant, Dr HO Kwok Cheung, is that:

“He, being a registered medical practitioner, was convicted at the Eastern Magistrates’ Courts on 28 October 2011 of an offence punishable with imprisonment, namely behaving in a disorderly manner in a public place, contrary to section 17B(2) of the Public Order Ordinance, Cap. 245, Laws of Hong Kong.”

Facts of the case

2. In the morning of 17 April 2011, the Defendant was a medical officer on duty at the Accident and Emergency Department of a public hospital. At about 9 a.m., a female student nurse was attending a patient in the A & E Department. There were also other persons including the patient’s son in the same treatment area which was partitioned by curtains. The patient’s son saw a hand holding a mobile phone reaching out under the curtain from the adjacent treatment area, and he heard a “chat” sound when the mobile phone reached under the skirt of the student nurse between her legs. The patient’s son immediately went out and saw the Defendant leaving the adjacent treatment area hurriedly, and no one else was in that treatment area. He returned and told the student nurse about what he saw. A report was then made to the police by the patient’s son.

3. When the police arrived and made enquiries with other staff in the vicinity, it was revealed that the Defendant was the one who walked out from the adjacent treatment area at the material time. When the police located the Defendant and made enquiry with him, the Defendant became nervous and admitted that he took under-skirt photograph of the student nurse owing to curiosity, and that he had discarded the mobile phone at the hillside of the hospital laundry. He then led the police to recover the mobile phone from the hillside near the hospital laundry.
4. The Defendant was later charged with the criminal offence of behaving in a disorderly manner in a public place, contrary to section 17B(2) of the Public Order Ordinance. On 28 October 2011, he pleaded guilty to the criminal charge and admitted the Brief Facts of the case in the Eastern Magistrates' Courts. He was convicted of the offence and sentenced to probation for 12 months.

Findings of Council

5. The facts of the case are admitted by the Defendant.
6. On the basis of the evidence, in particular the certificate of trial and the facts agreed by the Defence, we are satisfied that the Defendant was convicted of the criminal offence and that the offence was punishable with imprisonment. We find him guilty of the disciplinary charge.

Sentencing

7. The Defendant has a clear disciplinary record.
8. In line with our published policy, we shall give him credit for his honest admission in this inquiry and during preliminary investigation. Nevertheless, in cases where the evidence is overwhelming and the allegations are indisputable, the credit will necessary be of a lesser extent than in other cases.

9. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant for the criminal offence for a second time, but to protect the public from persons who are unfit to practise medicine and to maintain public confidence in the medical profession by upholding the reputation of the profession.
10. The public reposes in the medical profession a high degree of trust, as in medical practice doctors are often involved in physical examination of patients including the intimate parts of their bodies. This is reflected in section 27 of the Code of Professional Conduct which warns doctors that the Medical Council will likely take a particularly serious view in respect of offences involving indecent behaviour. We must ensure that every doctor is of good character and will not succumb to temptations to abuse the public trust for gratification of his/her personal motives.
11. We accept that the defendant has learned a hard lesson from the criminal conviction and sentence. In view of his remorse and insight into his problem, as reflected by his seeking psychological treatment shortly after the criminal offence, we are of the view that he had gained insight into his problem. While we must emphasise that seeking post-incident treatment is not necessarily a mitigating factor, this reflects the Defendant's insight into his problem and thus a lesser likelihood of re-offending.
12. We must ask ourselves whether the Defendant can be safely allowed to continue in practice, having regard to our responsibility to safeguard the public who may consult him as patients. We are of the view that the likelihood of re-offending is low and that he can be allowed to continue in practice.
13. Having regard to the gravity of the case and the mitigating factors, we consider that removal from the General Register for a period of 4 months is appropriate. We further order that the removal order be suspended for a period of 1 year, subject to the condition that he shall not commit any further disciplinary offence within the suspension period. If he commits any further disciplinary offence within the suspension period (irrespective of when he is convicted of the further disciplinary offence), the removal order is liable to be activated in part or in full.

14. We strongly warn the Defendant that he must take all necessary measures to keep himself within the bounds of medical ethics. If he does not treasure the chance that we have given him and commits any further disciplinary offence, he should expect that a severe order will be imposed.

Prof. Felice Lieh-Mak, GBS, CBE, JP
Temporary Chairman, Medical Council