

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr TSOI Wing Sang (蔡榮生醫生) (Reg. No M09441)

Date of hearing: 2 June 2013

1. The charges alleged against the Defendant, Dr TSOI Wing Sang, are that:

“On or about 8 May 2012, he, being a registered medical practitioner, abused his professional position as a medical practitioner by:

- (a) making statements of a sexual nature to his patient Ms. A;
and/or
 - (b) asking Ms. A to perform unnecessary postures under the pretext of treatment.”
2. Although not expressly stated in the charges, both parties agree that the charges are in respect of the disciplinary offence under section 21(1)(b) of the Medical Registration Ordinance, namely, misconduct in a professional respect. We shall proceed on that basis.

Facts of the case

3. Ms. A consulted the Defendant for influenza, headache, cough and upper respiratory tract allergy. There was no other person in the consultation room. According to Ms. A, the Defendant made some obscene remarks to her and also asked her to adopt some compromising postures. Although she did not think much about it at the time, after returning home she felt that the Defendant was sexually harassing her. Subsequently, she made a complaint to this Council.

4. The obscene remarks in question were “你咁索呀，仲未嫁，快d 勾番條佬啦！” and “像黃狗射尿一樣就得嘞！”. Such remarks are entirely colloquial. We shall not attempt any translation, as no translation can fully reflect their meanings and connotations.
5. The compromising postures in question were for Ms. A to lift the left leg backwards and reach down to lift the leg with her left hand. At the relevant time, Ms. A was wearing a skirt.

Findings of Council

6. Initially in his submission to the Preliminary Investigation Committee, the Defendant did not dispute having made the remarks in question. He explained that Ms. A was suffering from allergy, and he was only jokingly suggesting Ms. A to marry a rich guy and move to the Mid-level where the air and environment would be much better. As to the compromising postures, he said that a song was being played in the clinic and he was humorously teaching Ms. A to mimic the lyrics to lift her left hand and open her mouth to ventilate her unhappiness, so as to alleviate her negative emotions. He said that it was a misunderstanding caused by lack of communication, for which he offered his apology.
7. However, after he was notified in February 2013 that an inquiry would be held, he commenced legal proceedings for defamation against Ms. A in March 2013, accusing her of taking his statements out of context in her complaint to this Council. In the Statement of Claim, he admitted that he had made the suggestion for Ms. A to marry a rich man and move to the Mid-level, but the suggestion was intended to deal with Ms. A's allergy. No mention was made of the statement “像黃狗射尿一樣就得嘞！”.
8. Then in April 2013, the Defendant wrote a letter to this Council requesting that this inquiry originally scheduled for 29 April 2013 be adjourned pending the result of his defamation action. In the same letter, he accused Ms. A of making “*untrue, unfounded and defamatory statements...calculated to disparage [his] reputation and professionalism*”.

9. In this inquiry, the Defendant gave oral evidence. He strongly denied making any of the statements in question or asking Ms. A to perform any posture. Instead, he alleged that Ms. A herself made statements similar to the statements in question, and she performed the postures on her own initiative.
10. From the chronology of the different versions given by the Defendant, it is obvious that he was changing his story as he went along. During cross-examination, his credibility was completely destroyed. Just to quote an example, when he was asked what triggered the remark about a urinating dog which he alleged was made by Ms. A, he categorically confirmed that the lyrics of the song referred to raising the leg. However, upon the relevant lyrics being obtained, Defence Counsel confirmed that there was no reference whatsoever to the leg or foot.
11. We find the Defendant a dishonest and unreliable witness. We reject his evidence.
12. We find Ms. A an honest and reliable witness. Her evidence was clear, direct and consistent. She was forthcoming in answering questions. We accept her evidence.
13. Taking into consideration Ms. A's evidence and the Defendant's admissions in his submission to the Preliminary Investigation Committee, we find that the Defendant had made the remarks “你咁索呀，仲未嫁，快d勾番條佬啦！” and “像黃狗射尿一樣就得嘞！”， and that he had told Ms. A to perform postures described by Ms. A.
14. The remarks are clearly obscene and entirely improper in the context of a medical consultation. Such derogative remarks were entirely uncalled for. The Defendant argued that it was a humorous manner of communicating his medical opinion to Ms. A. We cannot agree. Although in appropriate circumstances, doctors may communicate with patients in colloquial language in order to effectively put across a message, all doctors must do so in a respectable manner, without resorting to obscene, offensive and derogative remarks. Remarks suggesting an improper sexual relationship must not be used.

15. We are satisfied that the remarks in question are of a sexual nature, and it was an abuse of the Defendant's professional position for him to make those remarks in a medical consultation. The Defendant's conduct in making the remarks has fallen far below the standard expected amongst registered medical practitioners. We find him guilty of professional misconduct as in Charge (a).
16. As to the compromising postures, we see no medical basis for the Defendant to ask Ms. A to perform those postures. Doctors may ask patients to perform various movements for medical reasons such as diagnosis and treatment. However, they cannot abuse patients' trust in the medical profession and ask patients to do unnecessary and inappropriate things, particularly where such requests would subject the patients to ridicule or embarrassment. The Defendant's instruction in the present case was entirely unjustified, and was embarrassing if not offensive to Ms. A.
17. We are satisfied that the Defendant in instructing Ms. A to perform those unnecessary postures in a medical consultation was abusing his professional position. Such conduct was clearly below the standard expected amongst registered medical practitioners. We find him guilty of professional misconduct as in Charge (b).

Sentencing

18. The Defendant has two previous convictions for disciplinary offences, in August 2004 and August 2006. The previous convictions were in respect of quoting the qualification of MBBS which he did not possess and criminal conviction for failing to keep proper record of dangerous drugs.
19. There is no meaningful mitigation at all. Not only did the Defendant deny the facts in the charges, he went even further by fabricating an allegation that the obscene remarks were made by the Patient herself. There is clearly no remorse.
20. Although the previous convictions are not of similar nature to the present offences, we must have regard to the fact that the Defendant has been found guilty twice and that he has been sentenced to suspended removal from the

General Register previously. There was every reason for him to take particular caution to ensure that he would practise within the bounds of medical ethics.

21. The present case involved conduct entirely within the Defendant's control. Obviously he had not learnt any lesson from the two previous convictions, and the previous disciplinary orders had no effect in guiding him onto the right track. He had no regard to the consequence of his flirtatious attitude when making the obscene remarks to the Patient.
22. Section 25.1 of the Code of Professional Conduct makes it clear that any form of sexual advance to a person with whom the doctor has a professional relationship is professional misconduct. A strong message must be sent both to the Defendant and the public that this Council does not tolerate such improper attitude by doctors towards patients.
23. The effective practice of medicine depends to a large extent on the trust between doctors and patients. If the image of the medical profession is allowed to deteriorate into a state that the public loses trust in the profession, both the profession and the society will suffer seriously. Although the present case is mainly verbal abuse rather than physical abuse of the Patient, we must not allow the reputation of the medical profession built up over many years to be ruined by such improper conduct by the unscrupulous few.
24. Having regard to the gravity of the case, we make a global order that the Defendant's name be removed from the General Register for a period of 12 months, and the operation of the order be suspended for a period of 3 years, subject to the following conditions:-
 - (a) The Defendant shall not commit any further disciplinary offence during the suspension period, irrespective of the time of conviction of the further offence.
 - (b) The Defendant shall undergo continuing medical education in medical ethics to the equivalent of 10 CME points within the suspension period. Advance approval of the CME course(s) must be obtained from this Council. Documentary proof of completion of the continuing medical education should be produced to this

Council not later than 2 weeks after expiry of the suspension period.

- (c) Any breach of the above conditions will render the removal order liable to be activated, in part or in full.

25. We must emphasise that this would be the last chance we are giving to the Defendant to allow him to continue in practice. If he is found guilty of further disciplinary offence, he should expect to be removed from the General Register without suspension. He should treasure the opportunity we have given him, and take all caution to avoid breaching the rules of medical ethics again.

Prof. LAU Wan Yee, Joseph
Chairman, Medical Council