

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 YAN Wing Tat Victor (甄榮達醫生) (Reg. No.: M01268)

Date of hearing: 6 December 2022 (Tuesday)

Present at the hearing

Council Members/Assessors: Dr HO Pak-leung, JP  
(Chairperson of the Inquiry Panel)  
Dr LEUNG Chi-chiu  
Dr CHAN Nim-tak, Douglas  
Mrs BIRCH LEE Suk-yea, Sandra, GBS, JP  
Mr LUI Wing-cheung, Kenneth

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendant: Mr Warren SE-TO of  
Messrs. Mayer Brown

Senior Government Counsel representing the Secretary: Miss Sanyi SHUM

1. The charge against the Defendant, Dr YAN Wing Tat Victor, is:

*“That on 19 June 2018, he, being a registered medical practitioner, disregarded his professional responsibility to his patient Mr FUNG (“the Patient”), deceased, in that he, during a medical consultation with the Patient, solicited the Patient to donate HK\$1,000,000 to the Division of Cardiology of the Chinese University of Hong Kong.*

*In relation to the fact alleged, 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 23 August 1968 to the present. His name has been included in the Specialist Register under the specialty of Cardiology since 4 March 1998.
3. This case against the Defendant originated from a complaint made on 14 July 2019 with the Medical Council. As presented in the Secretary's bundle, the name of the complainant has been redacted throughout.
4. At the beginning of the inquiry, the Secretary made an application for an anonymity order in respect of the name of the complainant. The Defendant did not object to the application.
5. In support of the application, the Secretary referred us to a witness statement dated 25 August 2022 made by the complainant, with his/her name redacted, in which the complainant gave the following reasons:

*“I would like to apply for anonymity order to have my name anonymised at this disciplinary inquiry. I am involved in an ongoing legal case in Hong Kong where a minor is involved. Dr YAN’s acquaintance is involved in that case and proactively seeking out to reach the minor. It is therefore necessary for my identity and location to be kept confidential.”*

6. The complainant had not provided any information or documents whatsoever of the alleged legal case he/she was involved in. We have no information to assess how the alleged legal case involving a minor has anything to do with the Defendant's acquaintance, and how the Defendant's acquaintance has anything to do with the Defendant in this disciplinary inquiry. We do not see any justification for any anonymity order in respect of the name of the complainant. We therefore refused the Secretary's application.
7. The complainant is a Mr KK Wong (“**Mr Wong**”). Mr Wong's complaint is that the Defendant had during the consultation on 19 June 2018 with the Patient, the late Mr Fung, solicited for a donation of \$1 million to fund his son's research work at The Chinese University of Hong Kong.

8. On 28 January 2021, Mr Wong provided to the Medical Council an Affirmation of a Ms Fung made on 31 July 2019 for use in a High Court proceedings in HCMP 1017 of 2019 together with an exhibit marked “FHLBJ-1”, which is a copy of the audio recording and transcript (in Chinese with English translation) of the consultation with the Defendant on 19 June 2018.
9. At the inquiry, both parties submitted to the Panel a Statement of Agreed Facts. It is agreed between the Secretary and the Defendant that the transcript in the Secretary’s bundle (pp. 14 to 18 and 19A to 34) (“**the Transcript**”) represents the contents of the audio recording of the Defendant’s consultation with the Patient on 19 June 2018.
10. The Secretary mainly relies on the contents of the Transcript in support of her case against the Defendant.

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

11. 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.
12. There is no doubt that the allegation 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 the disciplinary charge against him carefully.

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

13. The Defendant adopts a neutral position and defers to the Panel as to whether what took place on 19 June 2018 amounted to solicitation and if so, whether the solicitation would amount to misconduct in a professional respect.

14. The Defendant does not dispute that what took place on 19 June 2018 was a medical consultation. In fact, there are many paragraphs from the Transcript showing that there were discussions with the Patient of the Defendant's medical opinion and medications. We have no doubt that what took place on 19 June 2018 was a medical consultation and there was a subsisting doctor-patient relationship at the material time.
15. In this case, the Defendant requested the Patient during a medical consultation to donate HK\$1 million under the name of the Defendant's son to the Division of Cardiology of the Chinese University of Hong Kong. The Defendant had not just requested once, but repeatedly requested for donation for his son during the medical consultation. In our view, this was inappropriate.
16. What is more serious in this case is that there was obviously conflict of interest on the part of the Defendant when he solicited for donation for his son. Further, the Defendant made the remarks to the Patient that should his grandson wish to study medicine, there might be a higher chance of being offered a place at the medical school of the Chinese University of Hong Kong, or that the Patient would be well taken care of when one day he had to attend the Prince of Wales Hospital. In our view, it is absolutely unbecoming of a medical practitioner to have made those remarks of making donation for differential treatments, which damage not only the good reputation and professionalism of the medical profession, but also in particular that of the colleagues working at the Department of Cardiology of the Chinese University of Hong Kong. The Defendant's solicitation for donation in this case clearly amounted to an abuse of doctor-patient relationship and trust.
17. 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 as charged.

### **Sentencing**

18. The Defendant has a clear disciplinary record.
19. The Defendant takes a neutral stance and is not contesting the disciplinary charge. We shall give him credit for that in sentencing.

20. The Defendant accepts that what he said was improper and a lapse of judgement. He told us that he would be more careful and would uphold the highest standard of integrity in the future.
21. We accept that the Defendant is remorseful and he should have learnt a hard lesson. The risk of re-offending is low.
22. Taking into consideration the nature and gravity of the case and what we have heard and read in mitigation, we shall order that a warning letter be issued to the Defendant, and that our order shall be published in the Gazette.

**Remark**

23. The Defendant's name is included in the Specialist Register under the Specialty of Cardiology. We shall leave it to the Education and Accreditation Committee to decide on whether anything may need to be done to his specialist registration.

Dr HO Pak-leung, JP  
Chairperson of the Inquiry Panel  
The Medical Council of Hong Kong