

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Dates of hearing: 26 July 2012 (Day 1), 25 August 2012 (Day 2),
2 September 2012 (Day 3), 7 October 2012 (Day 4),
4 November 2012 (Day 5)

Defendant: Dr TONG Yung Man Christopher (湯勇文醫生)

1. The charges against the Defendant, Dr. TONG Yung Man Christopher, are that:-

“He, being a registered medical practitioner:

- (1) in respect of his patient Madam A, from December 2007 to September 2008, he
 - (a) conducted improper and unnecessary physical examination on Madam A;
 - (b) improperly took photographs and video of Madam A during consultations without her consent;
- (2) in respect of his patient Madam B, from December 2007 to March 2008, he
 - (a) conducted improper and unnecessary physical examination on Madam B;
 - (b) improperly took photographs and video of Madam B during consultations without her consent;
- (3) in respect of his patient Madam C, on 13 July 2008, he
 - (a) conducted improper and unnecessary physical examination on Madam C;

- (b) improperly took photographs of Madam C during consultations without her consent;
- (4) in respect of his patient Madam D, from November 2007 to August 2008, he
 - (a) conducted improper and unnecessary physical examination on Madam D;
 - (b) improperly took photographs and video of Madam D during consultations without her consent;
- (5) in respect of his patient Madam E, from March to April 2008, he
 - (a) conducted improper and unnecessary physical examination on Madam E;
 - (b) improperly took photographs and video of Madam E during consultations without her consent;
- (6) in respect of his patient Madam F, in or around June 2008, he
 - (a) conducted improper and unnecessary physical examination on Madam F;
 - (b) improperly took video of Madam F during consultations without her consent.

In relation to the facts alleged, he has been guilty of misconduct in a professional respect.”

Facts of the case

2. From early September 2005 to 29 September 2008, the Defendant practised medicine at a clinic in Tai Wai. Madams A to F were his patients.
3. At 12:38 hours on 26 September 2008, the police executed a search warrant at the Defendant’s clinic, and found a digital camera containing a memory card. In the memory card, there were 2 photographs showing female genital organs.
4. At 14:12 hours on the same day, the police executed another search warrant

at the Defendant's home in Ma On Shan, and found a desktop computer in which there was a large quantity of photographs and videos of female and child genital organs and breasts. Subsequent forensic examination revealed 876 photographs and 20 video clips in the hard disk of the computer.

5. Among these photographs and videos, the police identified 33 photographs and 7 video clips to have been taken of 6 female patients (i.e. Madams A to F) during their medical consultations with the Defendant on the following dates:-

- 1.11.2007: Madam D, 1 video (07:43 minutes)
- 13.12. 2007: Madam A, 1 video (03:46 minutes)
- 14.12.2007: Madam B, 1 video (07:14 minutes)
- 20.3.2008: Madam E, 2 photographs
- 7.4.2008: Madam A, 1 photograph
- 9.4.2008: Madam E, 1 video (01:53 minutes)
- 28.4.2008: Madam A, 1 video (00:45 minute)
- 7.6.2008: Madam F, 1 video (02:11 minutes)
- 13.7.2008: Madam C, 4 photographs
- 29.8.2008: Madam D, 1 video (01:52 minutes), 24 photographs
- 26.9.2008: Madam A, 2 photographs

Findings of the Council

6. There are 2 charges in respect of each of the patients, i.e. the examination charge and the photograph/video charge. We shall deal with the photograph/video charges first, before dealing with the examination charges.

Photograph/video charges

7. The Defence admitted that with the exception of the photograph labeled "IMG 2810", all the photographs and videos in question were taken covertly by the Defendant of Madams A to F during their medical consultations, without their

knowledge.

8. Madams A, B, D, E and F all gave evidence before us that they did not know that the photographs (with the exception of “IMG 2810”) and videos were taken, and if they had known, they would not have consented.

9. Madam C, the truth of whose evidence in the criminal trial was admitted by the Defence, similarly did not know that the photographs were taken, and if she had known, she would not have consented.

10. Patients repose a high degree of trust in doctors. Sometimes a patient has to expose his/her body including the intimate parts for medical examination by the doctor, on the basis that the patient’s privacy will be carefully protected and that the examination is necessary for the patient’s medical well-being. A doctor can never secretly or without consent take or attempt to take photographs or videos of any part of a patient, let alone the intimate parts, during medical consultations. To do so is a blatant and serious breach of the patient’s trust, and will seriously undermine public trust in the medical profession.

11. Doctor-patient relationship is a professional relationship, and a patient’s privacy must be treated with full respect at all times. It is fundamental training for all doctors that photographs or videos of patients, especially of their intimate parts, can be taken only with express consent and only if there is a proper medical reason for doing so.

12. If there is such a medical reason, the patient must be informed of the need to take, and the reason for taking, the photographs or videos. Express consent must be obtained from the patient, and if the patient does not wish to have the photograph or video taken, the patient’s wish must be respected.

13. Photographs and videos for a patient’s medical records should be taken for the purpose of showing the clinical features in question, and proper precautions should be taken to avoid showing the other parts of the patient, in particular the intimate parts, unnecessarily.

14. Where photographs or videos are taken as part of the patient’s medical record, such photographs or videos must be documented in the medical record and kept secure from unauthorized access by, or improper disclosure to, other persons.

15. We recognize that in some situations a doctor may wish to take photographs showing specific medical conditions for use in academic research or teaching. Such photographs are unrelated to the medical treatment of the patient, and are not for the benefit of the patient. While a doctor can make such request to the patient,

the doctor must explain clearly that the photographs are not related to the patient's treatment and the patient's refusal will not cause prejudice to his/her treatment. Otherwise, any consent obtained is neither informed consent nor valid consent.

16. The only photograph taken with the knowledge of the patient is "IMG 2810" taken of Madam A on 7 April 2008. The Defendant told Madam A that the photograph was for a report to be submitted to the Medical Council. This is untrue, as there is no reason for a doctor to take a photograph of a patient's exposed breasts and genitals for submission to this Council. That was clearly a pretext used by the Defendant exploiting the patient's trust in him. Any consent given on the basis of such deception is null and void.

17. The videos show that:-

- (a) In the middle of the video showing the examination of Madam E on 9 April 2008, the recording was switched by the Defendant instantaneously from under the desk to above the desk, indicating that there was equipment for taking the recording from at least 2 angles, one under the desk and another above the desk.
- (b) The video showing the examination of Madam A on 28 April 2008 was taken not with a stationary lens from a fixed angle, but it followed the Defendant's movement when examining Madam A's vagina and breasts.
- (c) In the middle of the video showing the examination of Madam D on 1 November 2007, the lens was blocked by a fallen object causing the remaining 4 minutes of recording to contain only the audio part of the recording.

18. Given that (i) all the patients were not aware of the video recording even when they were facing the lens; (ii) the recording followed the Defendant's movements during his examination; and (iii) there were lenses from different angles, the only irresistible inference is that the Defendant had an elaborate set-up of both portable and stationary hidden equipment or disguised recording devices in the clinic to enable him to take the videos secretly. It was a carefully premeditated and systematic arrangement for taking videos without the patients' knowledge.

19. Each video shows the course of examination by the Defendant rather than the clinical features of the patient. None of them serves any useful medical purpose.

20. With the exception of the 2 photographs taken of Madam A on 26

September 2008 about an hour before the police search, all the photographs and videos were stored in the Defendant's desktop computer at his home.

21. There was no reference to the photographs and videos in the patients' medical records. There was no indication at all that there were photographs or videos stored away from the clinic. In the circumstances, they were not part of the patients' medical records.

22. Furthermore, the clinic in question was a medical centre, and the Defendant was on duty in the morning shift. A patient could be seen by another doctor when seeking consultation in the evening, when the Defendant was on leave, or when the Defendant was posted to another clinic. If there were parts of the patients' medical records stored away from the clinic, there must be documented reference to those off-site records and the other treating doctor must be able to gain ready access to the off-site records. There was no such documented reference to the photographs and videos.

23. Even though there was no evidence that the Defendant took the photographs and videos for academic purposes, only for completeness sake we wish to point out that these photographs and videos are not of any academic value, whether for research or teaching.

24. Also only for the sake of completeness, we do not accept that the Defendant was all along relying on a mistaken belief of implied consent by the patients. If he had believed that there was implied consent, he would not have resorted to taking the photographs and videos secretly. In any case, there was no evidence suggesting that the Defendant was under such a belief, despite our clear indication at the beginning of the Defence case that there was no evidence of what was in the Defendant's mind.

25. Irrespective of the Defendant's motive or purpose, secretly taking the photographs and videos of the intimate parts of female patients during medical consultation without the patients' knowledge is scandalous conduct which is grossly improper and unethical for medical practitioners.

26. We have considered each of the photograph/video charges independently and separately. We are satisfied that the Defendant's conduct in respect of each of the photograph/video charges is seriously below the standard expected amongst registered medical practitioners. We find him guilty of Charges (1)(b), (2)(b), (3)(b), (4)(b), (5)(b) and (6)(b).

Examination charges

27. We now deal with the examination charges.
28. Physical examination of a patient's intimate parts should be conducted only if it is clinically indicated. Whether or not the examination is clinically indicated will be judged according to the patient's medical history and presenting symptoms.
29. Before conducting an intimate examination, a doctor should explain the purpose of the examination, and the offer of a chaperone is recommended.
30. A patient consents to physical examination for the purpose of medical management. If the examination is intended to be conducted for other reasons such as academic research, specific and express consent must be sought before doing so, with clear explanation that the proposed examination is unrelated to the patient's management and that the patient's refusal will not cause any prejudice to his/her medical management.
31. Physical examination of patients must be conducted in a professional manner consistent with accepted medical practice. If during the course of examination, the doctor touches the patient's body in other manners which does not serve any medical purpose, the doctor exceeds the scope of the patient's consent and steps out of the scope of medical examination. Such touching beyond the scope of medical examination is a tortious act of battery and, if indecency is involved, a criminal act of indecent assault.
32. In August 2001, this Council issued the following guideline on "Presence of a chaperone during an intimate examination":-

"In good clinical practice, a chaperone is recommended during an intimate examination because the chaperone is an ultimate safeguard for both the patient and the doctor. If the patient prefers to be examined without a chaperone, the request should be honoured and recorded in the medical record. This guideline is adopted with reference to a report of the Working Group of the Royal College of Obstetricians and Gynaecologists on intimate examination."
33. While a chaperone may not be always available or the patient may refuse the presence of a chaperone, at least an offer should be made so that the patient can decide whether or not to have the examination conducted in the presence of a chaperone.
34. The physical examinations referred to in the 6 charges are the genital and/or

breast examinations on the 11 occasions set out in paragraph 5 above when the photographs or videos in question were taken.

35. Except where indicated otherwise in our findings below, no chaperone was present during the examinations in question. The Defendant did not offer the option of a chaperone. In fact, on a previous occasion when Madam B requested the presence of a nurse, the Defendant replied that the nurses were very busy.

36. With the exception of the examination of Madam C on 13 July 2008 as shown in the photograph “IMG 3120 – 3123” and the examination on Madam E on 20 March 2008, the Defendant did not wear gloves in any of the examinations, even when he was examining the patient’s genitals.

37. Although an unsuspecting patient without any memory aid may not recall the details of how the Defendant conducted the examination, the photographs and videos are effective visual aids to refresh the patient’s memory of how things happened. We accept the evidence of the patients.

38. The videos are most telling, as they show how the Defendant conducted the examinations.

39. Having regard to the relevant medical records, the patients’ evidence, the photographs and videos, and the experts’ evidence, we make the following findings:-

Madam A

- (a) On 13 December 2007, the Defendant undressed Madam A’s brassiere without informing her. While auscultating Madam A with the stethoscope in his right hand, he touched the patient’s left breast and nipple with his left hand improperly and unnecessarily. On several occasions, he improperly and unnecessarily placed the fingers of his right hand on the patient’s left nipple and then right nipple during auscultation. After auscultation, he improperly and unnecessarily placed his left hand on the patient’s right breast. He then spent 22 seconds doing up the patient’s brassiere in her back while face to face with her, which was improper and unnecessary.
- (b) On 28 April 2008, he touched Madam A’s external genitalia without gloves which unnecessarily exposed the patient to the risk of infection and was improper for genital examination. He then touched her breasts without washing his hands. After the genital examination, he ruffled the patient’s pubic hair for 3 seconds, which

had nothing to do with medical examination at all. He improperly and unnecessarily touched the patient's left and right nipples. No findings of the genital examination were entered in the medical record.

- (c) On 26 September 2008, he conducted genital examination with Madam A bending forward in a standing position, instead of the proper genital examination position of lying down on the back with knees bent up. He inserted his bare fingers into the patient's vagina from the back, which unnecessarily exposed the patient to the risk of infection and was improper for genital examination.

Madam B

- (d) On 14 December 2007, the Defendant auscultated Madam B's chest with full exposure of her breasts. Although the examination was not a complete respiratory and cardiovascular examination, we cannot say that the examination was improper and unnecessary.

Madam C

- (e) On 13 July 2008, the Defendant examined Madam C's genitalia by inserting his finger into her vagina. Given his diagnosis of shingles, the examination indicated should be visual examination by use of a vaginal speculum, in order to find out whether there were any shingles or blisters inside the vagina. Digital examination inside the vagina was not indicated, and served no purpose for making a diagnosis.

Madam D

- (f) On 1 November 2007, in the middle of chest examination, the Defendant adjusted Madam D's right hand and sitting position so as to expose both of her breasts to the lens.
- (g) On 29 August 2008, she went to see the Defendant for a Papanicolaou test report on the cervical smear sample which was taken on 11 August 2008. The test result was normal, and the Defendant also noted "*No symptoms*" in the medical record. However, the Defendant asked her to lie down for another

examination without explaining the reason. He tried to undress her skirt without informing her. He inserted his bare finger into her vagina. Later he palpated her breasts and nipples. Given the normal Pap test result and the absence of any symptoms, the vaginal and breast examinations were absolutely not indicated. No findings of the breast and genital examination were entered in the medical record.

Madam E

- (h) On 20 March 2008, Madam E consulted the Defendant for urinary tract infection and vaginal examination was indicated. It was unclear from her evidence whether gloves were worn and whether a chaperone was present. Although the examination was incomplete, we cannot say that this examination was improper and unnecessary.
- (i) On 9 April 2008, in the middle of genital examination he manipulated Madam E to an awkward lying position so as to expose her pubic area directly to the lens, to the extent that her leg fell off the examination couch and had to be supported by a chair. He palpated her genitalia, which was not clinically indicated. The examination was improper and unnecessary.

Madam F

- (j) On 7 June 2008, Madam F consulted the Defendant for menstrual problems after surgical removal of an ectopic pregnancy. She had no breast symptoms. Breast examination was not indicated at all.
- (k) While auscultating Madam F from her back with his right hand on the stethoscope, at the same time he was repeatedly adjusting the angle and the zooming of the lens with his left hand. When auscultating the chest, he adjusted Madam F's sitting position so as to expose her breasts more directly to the lens. After auscultation, he squeezed and caressed her breasts in a haphazard and non-systematic manner for 47 seconds, which was entirely inconsistent with medical examination. Such manipulations were not medical examination.

40. We are satisfied that the Defendant's conduct in respect of each examination charge, except Charge (2)(a), has fallen seriously below the standard expected amongst registered medical practitioners. We find him guilty of

professional misconduct in Charges (1)(a), (3)(a), 4(a), (5)(a) and (6)(a). We find him not guilty of Charge (2)(a).

41. There was a consultation during which the Defendant suddenly asked Madam B to kiss him. Although this consultation is not covered by the charges, we must say that it is grossly improper conduct by a doctor towards his patient. For the avoidance of doubt, we have not taken this matter into consideration in deciding on the charges.

Sentencing

42. The Defendant has a clear record.

43. We can see no mitigating factor at all. He has shown no remorse.

44. This is an extremely serious case. The Defendant started to commit the misconduct systematically shortly after he qualified as a medical practitioner. It was a systematic and deliberate exploitation of his status as a doctor to take advantage of his patients over an extended period.

45. The secret recording equipment was obviously sophisticated and effective to escape detection by the victims, given that the victims could not detect the secret recording despite being eye to eye with the recording equipment at close distance on a number of occasions. If not because of the police arrest, in all likelihood the misconduct would have continued for much longer.

46. Although we do not know whether the other photographs and videos among the 876 photographs and 20 video clips were also taken of his patients, we cannot disregard the fact that the 33 photographs and 7 video clips in this case were found among the huge collection of offensive materials.

47. We must take into consideration the potential abusive use of these photographs and videos and the damage it would have caused to the patients if the materials were distributed to other persons. Illegitimate circulation of such images through the internet is threatening, and can cause irremediable damage to the dignity and privacy of the patients. Simply the fear of the photographs and videos falling into the wrong hands can be threatening and humiliating to the patients for a long period of time.

48. The victims targeted by the Defendant are relatively young female patients. We must have regard to the fact that the other photographs and videos also included images of child genital organs. These are the most vulnerable group of

patients.

49. Doctors have the duty to act in the best interest of their patients. The Defendant has blatantly breached his duty. Indecent act by a doctor towards his patients in the course of medical consultation is a matter of grave concern to the profession as well as the public.

50. We cannot speculate the motive for his misconduct, but it can only be for gratification of his deviant desire or for profit. He is a danger to the public, and cannot be allowed to practise medicine.

51. We cannot underestimate the damage the Defendant's misconduct can do to the reputation of the medical profession. As we have said earlier, the doctor-patient relationship relies to a large extent on the trust which the public can repose on the profession. Without such trust the practice of medicine is untenable.

52. We bear in mind our duty to protect the public from persons who are not fit to practise medicine, and to maintain public confidence in the medical profession by upholding the reputation of the profession. A loud and clear message must be sent to the delinquent few that this Council will spare no effort in protecting the public trust in the profession which has been built up over the years.

53. Having regard to the gravity of the case, we order that the Defendant's name be removed from the General Register indefinitely. We also order that the removal shall take effect immediately upon its publication in the Gazette.

54. Having regard to the sophisticated and systematic scheme, and the readiness with which he seized the opportunity to implement his scheme, we consider that he cannot be a fit and proper person to practise as a doctor. He cannot be restored to the General Register at all.

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