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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHEUNG Ka Chai (Reg. No.: M20334)

Date of hearing: 27 January 2023 (Friday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr IP Wing-yuk
Dr CHOY Chung-ming, Eric
Ms LI Siu-hung
Mr LAI Hing-kwan

Legal Adviser: Mr Edward SHUM

Senior Government Counsel representing the Secretary: Ms Elsie CHU

The Defendant is present and he is not legally represented.

1. The charge against the Defendant, Dr CHEUNG Ka Chai, is:

> *"That he, being a registered medical practitioner, was convicted at the Fanling Magistrates' Courts on 6 October 2021 of the offence of taking part in unlawful assembly, which is an offence punishable with imprisonment, contrary to Section 18(1) and (3) of the Public Order Ordinance, Chapter 245, Laws of Hong Kong."*

Facts of the case

2. The name of the Defendant has been included in the General Register from 1 July 2021 to the present and his name has never been included in the Specialist Register.

3. There is no dispute that the Defendant was convicted after trial by a Magistrate sitting at the Fanling Magistrates' Courts on 6 October 2021 of the offence of taking part in unlawful assembly, contrary to section 18(1) and (3) of the Public Order Ordinance, Chapter 245 of the Laws of Hong Kong. As a result of the said conviction, the Defendant was sentenced to imprisonment for 1 year and 8 months.

4. The said conviction was reported to the Medical Council (the "Council") by way of an email from the Defendant's friend on 6 October 2021.

5. The Defendant subsequently lodged an appeal against the said conviction and sentence. The appeal was heard by Mr Justice Johnny CHAN on 23 May 2022. On 15 July 2022, Mr Justice Johnny CHAN handed down his written judgment (the "Appeal Judgment"). A copy of the same was placed by the Legal Officer before us for our consideration. In short, the Defendant's appeal against conviction was dismissed but his appeal against sentence was allowed and the length of imprisonment was reduced to 14 months.

6. There is no dispute that the offence of taking part in unlawful assembly was and still is an offence punishable with imprisonment. By virtue of section 21(1)(a) of the Medical Registration Ordinance ("MRO"), our disciplinary powers over the Defendant are engaged.

7. Section 21(3) of the MRO expressly provides that:-

> "*Nothing in this section shall be deemed to require an inquiry panel to inquire into the question whether the registered medical practitioner was properly convicted but the panel may consider any record of the case in which such conviction was recorded and any other evidence which may be available and is relevant as showing the nature and gravity of the offence.*"

8. In this connection, we noted from reading the Appeal Judgment that the circumstances leading to the arrest of the Defendant for the offence of taking part in unlawful assembly were as follows:-

> "… 控方第一證人游督察是機動部隊 X3 小隊的指揮官，於 2019 年 12 月 24 日身穿防暴制服當值。同日晚上 7 時 50 分，游督察從通訊機中得知形點一期內有人破壞北京樓和二期的元氣壽司。因此游督察和隊員在形點一期門外設立防線。同日晚上 8 時，游督察從通訊機再收到一期北京樓和二期元氣壽司受人破壞的消息，所以他和約 30 名小隊警員進入一期內，抵達 2 樓設立防線。當時，形點一期部分店舖已經落閘…
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> … 同日晚上 8 時 10 分，形點一期 2 樓的大部分店舖已經落閘。形點一期的商場共有兩層。當時有大約 200 多人聚集於該處，大叫反政府和侮辱警察的口號，並且表現激動。這些聚集的 200 人中，大部分身穿深色或黑色的衣服，部分蒙面或戴上眼罩遮蓋樣貌。游督察沒有看見其他市民在商場內逛街或觀看貨物…

... 同日晚上 8 時 15 分至 8 時 25 分，警方用擴音機向在場集結人士發出兩次非法集結的口頭警告。現場人士未有停止集結，仍然高叫口號，留在 1 樓和 2 樓…

... 同日晚上 8 時 50 分，游督察收到指示，從 2 樓撤退和離開形點一期。因此，他和小隊便返回 1 樓，準備離開。在到達一樓後，有物件從 2 樓被人掉落一樓，墜落在游督察的右前方，發出『嘭』一聲的巨響。因此游督察指示小隊隊員沿着扶手電梯返回二樓，進行掃蕩和拘捕…

... 當游督察抵達 2 樓時，在玩具反斗城對出 5 至 10 米位置，看見上訴人在人群後面手持攝錄機拍攝警察。當時上訴人身上沒有記者證件或識辨物。游督察有理由相信上訴人有份參與非法集結，於是便把他截停和帶到玩具反斗城門口…

... 控方第二證人黃警員與案發當天駐守機動部隊 X3 小隊…當日晚上八時正，他收到形點商場內的北京樓和元氣壽司店舖被破壞的信息。於是，黃警員和隊員便進入一期商場 1 樓。之後，他們利用扶手電梯登上 2 樓…

... 晚上 8 時 10 分，黃警員和 X3 小隊的 30 多名同事在一期 2 樓 Sinomax 店鋪外建立封鎖線。該處有大約 200 名大部分戴上口罩的人士正在聚集和叫囂及叫口號。這些人有部分身穿黑衫黑褲。晚上 8 時 15 分，警方向在場人士發出藍旗警告。當時，防暴警員面向玩具反斗城。小隊的傳令員高舉印上警告字句的藍色旗幟。警方亦以擴音器向聚集在 2 樓的人士警告他們正參與非法集結和要求他們立即離去，並警告他們警方可能作出檢控行動。但是，在場聚集的人士沒有散去，人數也沒有減少。他們繼續在場聚集和叫口號…

... 晚上 8 時 22 分，警方再次發出相同的藍旗警告。然而，在附近聚集的人數也沒有太大改變。這些人繼續聚集在 1 樓和 2 樓，也不時叫喊口號和叫囂…

... 晚上 8 時 50 分，游督察命令小隊開始撤離。晚上 8 時 56 分，黃警員返回 1 樓期間，發覺在形點一期 2 樓玩具反斗城附近有一件拳頭大小的黑色硬物被人飛擲到他隊員所在 1 樓的位置附近。於是警方小隊返回 2 樓進行拘捕…

... 當黃警員沿着扶手電梯返回 2 樓途中，他看見游督察在玩具反斗城外正在控制一名戴黑色口罩的男子，即上訴人。上訴人頭髮長度及肩，身穿黑色長袖衫、黑色長褲、黑鞋及背著黑色背囊…

... 晚上 9 時 10 分，黃警員以『非法集結』和『拒捕』罪名拘捕了上訴人…在上訴人的黑色背囊內，黃警員搜出一個黃色頭盔、3M 手套、護目罩、防毒過濾器、過濾棉、三個 3M 口罩和一對未開封的耳塞。黃警員也檢取了上訴人帶在面上的口罩…”

9. In dismissing the Defendant's appeal against the said conviction, Mr Justice Johnny CHAN had this to say of the Defendant in the Appeal Judgment:-

“... 於本上訴，就着上訴人是否「參與」了本案的非法集結，本席可於「重新聆訊」時考慮案中證據以決定控方可否按無合理疑點的標準證明…這控罪元素。

... 從裁判官席前的證物 P3 片段可見，案發時商場內確有一非法集結進行中… 證據亦顯示案發時，商場內 2 樓的玩具反斗城外一帶有數十至 100 人聚集在一起，商場內其他位置也有大批人群聚集。上述聚集在商場內的人，不時向在場的警察呼叫出上文指出侮辱和挑撥性口號。裁判官正確指出他們的行為相當可能導致任何人合理地害怕如此集結的人會破壞社會安寧，或害怕他們會藉以上的行為激使其他人破壞社會安寧。本席認為證據清楚證明案發時上訴人身處的商場發生一非法集結，上訴人身處的商場內 2 樓的玩具反斗城外亦並非該非法集結範圍以外的地方。換言之，影像所見上訴人於商場逗留、拍攝及為警方制服的地點於相關時間有一非法集結進行中。

… 本席考慮了上訴人身處非法集結現場的時間。本席同意答辯人陳詞所說，證據可見上訴人在商場 2 樓的玩具反斗城外面徘徊和逗留至少約兩分半鐘。

... 本席謹記單純身處發生非法集結現場並不構成參與非法集結。本席需要考慮法庭可否從環境證據中推論上訴人有份參與商場內的非法集結。

... 本席認為，案發時上訴人穿着印有「光復香港 時代革命」和「Major in Revolution Rioters University」的 T 恤進入正發生非法集結的商場和在內逗留是案中一重要的環境證據。

… 本席同意答辯方陳詞，「光復香港 時代革命」這標語常見於 2019 年 6 月後發生的示威活動及警民衝突之中。更甚的是，上訴人穿着的 T 恤除了「光復香港 時代革命」的字

> 眼外，更印有「Major in Revolution Rioters University」(“主修革命 暴徒大學”)的英文字。以案發時的社會氛圍，一般市民不會穿着印有這些標語/字句的衣服外出，更不會穿着印有上述文字的衣服於有非法集結進行中的商場出現或逗留，免得瓜田李下，引起執法者懷疑。平情而論，上訴人穿着的 T 恤印有的標語/字句背後所鼓吹的暴力抗爭理念，完全與商場內集結的人士所作出的挑釁和辱罵警方的行為吻合。雖然沒有證據上訴人曾經公開展示為外衣遮蓋的 T 恤上的標語/字句，但他身穿該 T 恤身處本案的非法集結中，再加上他攜帶的裝備如防毒面罩、頭盔、護目鏡、3M 手套等都是社會運動示威者常見的裝備和他身穿黑衫黑褲之餘，更以一黑色口罩故意隱藏容貌。綜合上述上訴人的衣著裝備打扮，根本是… 激進示威者的常見裝束。本席認為上訴人案發時戴着一黑色口罩這不爭的事實，除顯示他故意隱藏自己的容貌外，亦顯示他正在參與進行中的非法集結。
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> ... 本席認為考慮上訴人拍攝警方制服另一名在場人士這行為時，不應斬件/切割式考慮拍攝行為本身是否破壞公眾安寧的行為。上訴人於本案的拍攝行為必須與本案的其他環境證供一併考慮。考慮到上訴人當時身處的非法集結，現場氣氛情緒高漲，雙方劍拔弩張，加上上訴人一身的裝束裝備(包括其 T 恤上印有的文字)和他身處的位置和逗留時間，裁判官有足夠理據裁定上訴人並非單純出現於現場，而是他與其他參與非法集結的人有足夠關聯且他亦有參與現場的非法集結。本席認為上訴人的拍攝行為顯然是因警察對現場非法集結採取驅散和拘捕行動時制服在場另一人而作出，這行為加上案中其他環境證據一併考慮，其比重絕對可以「幾何級數累積而摒除其他可能性」而最終使法庭作出唯一合理的推論上訴人並非單純出現於現場；他與其他參與非法集結的人有足夠關聯且他亦有參與現場的非法集結。”

10. Since there was no further appeal from the Appeal Judgment, we are entitled to treat the said conviction as conclusively proven against the Defendant.

11. Accordingly, we find the Defendant guilty of the disciplinary offence as charged.

Sentencing

12. The Defendant has a clear disciplinary record.

13. In line with our published policy, we shall give the Defendant credit in sentencing for not contesting these disciplinary proceedings. However, given that there is hardly any room for dispute in a disciplinary case involving criminal conviction, the credit to be given to him must necessarily be of a lesser extent than in other cases.

14. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant a second time for the same criminal offence but to protect the public from persons who are unfit to practise medicine and to maintain the public confidence in the medical profession by upholding its high standards and good reputation.

15. There is no doubt that the Defendant has committed a serious criminal offence. The fact that the Defendant was sentenced on appeal to immediate imprisonment for 14 months speaks for itself. But then again, we noted from the Appeal Judgment that there was no evidence to indicate that the Defendant was a core member of the unlawful assembly or that he had incited other people to participate in the unlawful assembly.

16. We appreciate that the functions of a criminal court and a disciplinary tribunal are quite different. The focus of a disciplinary tribunal's attention in a case like the present has to be on the need to maintain public confidence in the medical profession; and this is different from that of a criminal court determining sentence.

17. An important factor weighing in favour of the Defendant is that he is a young competent doctor and who may provide considerable useful future service to society. Indeed, most of his intern assessment reports had been exemplary.

18. However, when considering the appropriate sanction to be imposed on the Defendant, it is essential in our view to bear in mind the extent to which the underlying criminal offence is likely to undermine public confidence in the medical profession. Our sanction has to reflect the ethos and expectations of the community at large.

19. The Defendant stressed in his plea of mitigation that he did not engage in any violent or provocative behaviour during the incident. We do not agree with the Defendant that "*[t]he nub of my indiscretion was failing to leave the premises of the unlawful assembly whilst it was still lawful to do so.*" In our view, the Defendant had yet to accept the appeal judge's findings on his participatory intent. We have reservations on whether the Defendant has sufficient insight into his wrongdoings.

20. We have to balance the nature and gravity of the underlying criminal offence and the resulting damage to the public confidence in the medical profession against the need for imposition of sanction on the Defendant and its consequences.

21. Taking into consideration of what we have heard and read in mitigation, we order that the name of the Defendant be removed from the General Register for a period of 6 months. We further order that the removal order be suspended for a period of 36 months.

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