

MEDICAL REGISTRATION ORDINANCE (Chapter 161)

ORDER MADE BY THE INQUIRY PANEL OF  
THE MEDICAL COUNCIL OF HONG KONG

DR CHAN YAT FAI (REGISTRATION NO.: M11408)

It is hereby notified that after due inquiry held on 27 June 2022 in accordance with section 21 of the Medical Registration Ordinance, Chapter 161 of the Laws of Hong Kong, the Inquiry Panel of the Medical Council of Hong Kong found Dr CHAN Yat Fai (Registration No.: M11408) guilty of the following disciplinary offence:—

‘That he, being a registered medical practitioner, was convicted at the Kowloon City Magistrates’ Courts on 20 August 2021 of two counts of committing an act outraging public decency, which is an offence punishable with imprisonment, contrary to Common Law.’

By a letter dated 7 September 2021, Dr CHAN informed the Medical Council (the ‘Council’) that he was convicted after trial on 20 August 2021 of the offence of ‘Committing an act outraging public decency’.

Through the assistance of the Department of Justice, the Council obtained from the Kowloon City Magistrates’ Courts a copy of the Certificate of Trial of Dr CHAN and the transcript of his hearing before the trial Magistrate (the ‘Transcript’).

According to the Certificate of Trial, Dr CHAN was found guilty of 2 counts of the offence of ‘Committing an act outraging public decency’ contrary to Common Law and was sentenced by the trial Magistrate on 2 September 2021 to ‘Community Service Order for 240 hours’.

According to the Transcript, the trial Magistrate found proved on the evidence adduced at the trial that the 1st prosecution witness (‘PW1’), a lady in her 30s, was travelling on MTR from Central towards the direction of Tsuen Wan in the evening of 2 July 2020. When approaching Yaumatei MTR Station, the 2nd prosecution witness (‘PW2’), who was travelling in the same train compartment, told PW1 that she saw Dr CHAN taking underskirt photographs of PW1 with his mobile phone. Dr CHAN dashed out from the train compartment when the train doors opened. PW1 gave chase and grabbed hold of Dr CHAN’s backpack. During the struggle, PW1 and Dr CHAN fell on the platform floor. Some people helped PW1 to subdue Dr CHAN before the Police arrived. After arresting Dr CHAN, the Police found in his mobile phone, amongst others, 13 photographs depicting thighs and/or calves of persons in skirts. According to the records shown on the photographs, they were all taken during the time when PW1 and Dr CHAN were travelling in the same train compartment.

The offence of ‘committing an act outraging public decency’ was and still is an offence punishable with imprisonment under section 101I of the Criminal Procedure Ordinance, Chapter 221. By virtue of section 21(1)(a) of the Medical Registration Ordinance, Chapter 161 (‘MRO’), the Inquiry Panel’s disciplinary powers against Dr CHAN is engaged.

Section 21(3) of the MRO expressly provided 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.’*

Taking into consideration the Certificate of Trial and the Transcript, the Inquiry Panel found the aforesaid criminal conviction to be conclusively proven against Dr CHAN. Accordingly, the Inquiry Panel found Dr CHAN guilty of the disciplinary offence as charged.

Dr CHAN has a clear disciplinary record.

The Inquiry Panel noted from reading the Transcript that the trial Magistrate remanded Dr CHAN for 2 weeks after trial and called for a psychological report on him. In this connection, the Inquiry Panel’s attention was drawn by Dr CHAN to a Memo exchanged on 26 August 2021 between the Probation Officer and his treating psychiatrist, Dr TSANG, who commented inter alia that:—

*‘... In Chan’s case, it is likely that depression plays a significant role making him doing something against his rational mind. Upon treatment, the recidivist rate is considered very low.’*

The Inquiry Panel's attention was also drawn by Dr CHAN to the following passages in the medical report prepared by Dr TSANG on him dated 29 June 2021:—

*'45. To conclude, Mr. Chan is suffering from Obsessive Compulsive Disorder comorbid with Major Depressive Disorder, single episode, moderate. His depression increased in severity in recent 2–3 years.*

...

*55. He is motivated for and had good response to treatment. He is in remission for both OCD and MDD when he was seen on 5 June 2021.*

*57. The prognosis of his condition is considered to be very good. The recidivist rate is considered low with regular psychiatric treatment.'*

When sentencing Dr CHAN to 'Community Service Order for 240 hours', the trial Magistrate specifically imposed the condition that he should receive in the meantime regular treatment from psychiatrist or psychologist and/or counselling from psychologist.

Dr CHAN told the Inquiry Panel in mitigation that he continued to receive after his trial regular follow up psychiatric treatments with Dr TSANG.

The Inquiry Panel needed to emphasize that Dr CHAN's mental conditions at the time of the offence would only go to mitigation. In the Inquiry Panel's view, any act of outraging public decency like the present one must be condemned. Dr CHAN frankly accepted that his outraging act was an insult to the dignity and privacy of the female victim for which he felt shameful.

The Inquiry Panel acknowledged that Dr CHAN has learnt a hard lesson and has gained insight into his wrongdoing.

In the Inquiry Panel's view, there was a need, both for the protection of the public as well as in the best interest of Dr CHAN, to monitor him for a period of time of his ability to cope with the underlying stresses and negative emotions.

Taking into consideration the nature and gravity of this case and what the Inquiry Panel has heard in mitigation, the Inquiry Panel ordered that Dr CHAN's name be removed from the General Register for a period of 4 months and the operation of the removal order be suspended for a period of 2 years subject to the condition of examination by a psychiatrist nominated by the Council at least once every 6 months during the suspension period.

The orders are published in the *Gazette* in accordance with section 21(5) of the Medical Registration Ordinance. The full decision of the Inquiry Panel is published in the official website of the Medical Council of Hong Kong (<http://www.mchk.org.hk>).

LAU Wan-ye, Joseph *Chairman, The Medical Council of Hong Kong*