

MEDICAL REGISTRATION ORDINANCE (Chapter 161)

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

DR HO KIN MING (REGISTRATION NO.: M06502)

It is hereby notified that after due inquiry held on 5 May 2023, 21 May 2023, 11 June 2023 and 20 August 2023 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 HO Kin Ming (Registration No.: M06502) guilty of the following disciplinary charges:—

*“The particulars of the complaint are that he, being a registered medical practitioner, engaged in acts of indecency in that he:—*

- (a) on 5 December 2007, in Operating Theatre 2 at North District Hospital, touched Complainant A on the left area of her breast several times inappropriately and without her consent;*
- (b) on a date in March 2010, in his office at North District Hospital, hugged Complainant E and touched her hand inappropriately and without her consent; and*
- (c) on 6 December 2016, in an Operating Theatre at North District Hospital, hugged Complainant D from the back inappropriately and without her consent.*

*In relation to the facts alleged, either singularly or cumulatively, he has been guilty of misconduct in a professional respect.”*

2. By a letter dated 13 August 2019, the Hospital Chief Executive of North District Hospital (“HCE of NDH”) referred to the Medical Council a case regarding complaints made by some doctors in New Territories East Cluster against Dr HO for having committed acts of sexual harassment in the workplace from 2007 to 2018. HCE of NDH said that investigation was conducted within Hospital Authority (“HA”) and it was concluded that the allegations against Dr HO on touching various body parts and hugging were substantiated.

3. By letters dated 9 December 2019 and 11 August 2020, HCE of NDH provided to the Medical Council details of the complaints and extracts of interview notes in respect of three respective female complainants, namely Complainant A, Complainant E, and Complainant D.

4. According to the Statement of Agreed Facts dated 5 May 2023, Dr HO agreed, inter alia, that he was employed as a clinical staff in the HA from 1 February 1994 to 18 April 2019, and in February and March 2010 inclusively, his office was situated at NDH.

5. On 5 December 2007, Complainant A was assigned to participate in an operation at Operating Theatre 2, NDH. During the operation, her role was the junior list anesthetist while Dr HO was the senior list anesthetist. Dr HO as her supervisor would stand there to observe and supervise her. Complainant A told that at a point in time during the operation (general anaesthesia induction), she was standing in a position facing the patient’s head lying on the operation table. Dr HO was the only person standing on her left. They were standing close to each other. She was trying to insert a medical device, namely C-Trach LMA, into the patient’s pharynx. During the course when she was holding the device with her right hand, with her left hand positioned on patient’s head and mouth, she felt Dr HO used the back of his right hand to pat on her left breast for two episodes, and several times during each episode. She described the patting as very brief (“拍個過程好短”), there was no staying of his hand on her breast (“無停留”), and not vigorous (“都唔係大力嘅”). She also said there should be no less than one second in between the two episodes (“應該唔止一秒”). When asked by Dr HO’s counsel, she said the patting had contact with her left nipple area, which was at the middle of her left breast (“係會掂到我乳頭位置”, “係中間位置”). Complainant A said the patting by Dr HO on her left breast was intentional, and she never consented to it. Complainant A informed a Dr KOO and a Dr LAI on the same day and her senior, a Dr CHU, on the next day about the incident. She also recorded the incident in her diary.

6. The original of Complainant A’s diary was shown to the Inquiry Panel at the inquiry. The diary was in the form of a booklet. The relevant diary entry page was the one with date “5/12” (i.e. 5 December 2007), followed by the next diary entry page of date 15 December 2007. The booklet appeared intact. The relevant page with date “5/12” was part of and bound to the booklet, and did not appear to be some loose leaf subsequently added to the booklet. Despite

what Complainant A wrote in her witness statement dated 22 February 2023 that she recorded the incident in her diary on 5 December 2007, she clarified that it was possible that she recorded the incident on a date after 5 December 2007 but before 15 December 2007. The Inquiry Panel accepted what Complainant A said. There was nothing to undermine the truthfulness of the diary entry “5/12”. The Inquiry Panel accepted the diary entry “5/12” as true and contemporaneous record.

7. The Inquiry Panel bore in mind that the incident took place long time ago in 2007, and usually for cases with such long lapse of time the memory of witness might not be as accurate. Complainant A said that whether Dr HO had any conversation with her before, during or after the patting she could not remember. The Inquiry Panel accepted that it was normal because of the long lapse of time for her not to have remembered minor details. However, when it came to the core matters i.e. about the patting on her left breast by Dr HO, she could still remember very clearly. Her evidence in this respect was consistent all along with diary entry “5/12”, and she even reported the matter to other doctors on that day and the day after. Her evidence in those core matters was unshaken during cross-examination. The Inquiry Panel had the opportunity to examine the demeanour of Complainant A when giving evidence. Her evidence was direct, straightforward and consistent. The Inquiry Panel did not see any part of her testimony was exaggerated. Her evidence was honest and reliable on the overall. The Inquiry Panel accepted all of what she told at the inquiry as to the core matters. The Inquiry Panel found that Dr HO had used the back of his right hand to pat on Complainant A's left breast for two episodes, and several times during each episode, in the way as described by Complainant A.

8. At all material times, Dr HO was the superior of Complainant A. They were not close friends or acquaintances at all. Complainant A said that during the insertion of C-Trach LMA on 5 December 2007, she had not encountered any difficulty, which would require the assistance of Dr HO. It was a smooth procedure. She said there was no need for Dr HO to pat her on her left breast. The Inquiry Panel did not accept that the patting on Complainant A was done out of emergency or in difficulty situation with the insertion of C-Trach LMA. Even if there was difficulty or an emergency encountered, but which was not the case, that was also no reason for patting on the breast area of a female colleague. Dr HO could have verbally instructed Complainant A instead. The breast area was a very private part to a female.

9. As said, the patting not just happened once, but in two episodes, and there were several pats in each episode. The patting could not be accidental. In the view of the Inquiry Panel, the patting was intentional and targeted at Complainant A's breast area. Dr HO's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. Dr HO was therefore found guilty of misconduct in a professional respect under charge (a).

10. Complainant E told that on a day in February 2010, and it was after work, Dr HO requested her to prepare PowerPoint slides at his office. She proposed to prepare the slides at her workstation in the common anaesthetic staff room instead. Dr HO told her that he had already opened the PowerPoint slides on his computer in his office and insisted that she worked with him at his office. After she went into Dr HO's office, she sat on the chair, facing the desk with a desktop computer on it. Dr HO at first was standing inside the office, holding on to the door handle from inside, and then closing the door. She said she was scared when Dr HO closed the door. She could not remember what type of PowerPoint work she was asked to assist on. She could only remember that the PowerPoint work was Dr HO's personal work. She said the chair had wheels and the top of the chair's back was to the level of or below her shoulders. She said she was not tall, and therefore she was sitting towards the front part of the seat. Dr HO was standing behind her chair, on her right side. She proceeded to prepare the PowerPoint slides, Dr HO suddenly hugged her from the back and touched her right hand. She felt Dr HO's left upper limb touching her left shoulder area; Dr HO's chest area touching her back; Dr HO's right hand placing on the back of her right hand, with fingers of Dr HO's inserting through her fingers, and her right hand was holding the computer mouse on the desk at the time; and Dr HO's head placing next to the right side of her head, and she could feel Dr HO's chin touching her right shoulder. All the above lasted for less than 5 seconds, and she immediately stood up and left the office. She said she did not consent to those hugging and touching.

11. The Inquiry Panel bore in mind that the incident took place long time ago in 2010, and usually for cases with such long lapse of time the memory of witness might not be as accurate. The Inquiry Panel accepted that due to the long lapse, Complainant E might not be able to remember some non-essential or minor details. However, in relation to the core and essential matters i.e. how Dr HO hugged her and touched her right hand, she could still remember clearly. Her evidence as to the core matters was unshaken during cross-examination. The Inquiry Panel

had the opportunity of examining Complainant E's demeanour through video link. Her evidence was direct, straightforward and consistent. The Inquiry Panel did not see any part of her testimony was exaggerated. Her evidence was honest and reliable. The Inquiry Panel accepted all of what she said at the inquiry as to the core matters in relation to the incident.

12. At all material times, Dr HO and Complainant E were not close friends or acquaintances at all. There were only colleagues of each other, Dr HO being Complainant E's supervisor. There was no reason why Dr HO had to close his room door, particularly when a female colleague who was not any close acquaintance or friend of his was asked to stay alone in his room with him. The way he hugged her from behind and touched her hand clearly offended the contemporary standards of modesty and privacy, and right-minded persons would clearly consider the acts indecent. There was no reason why Dr HO had to hug Complainant E and touch her in such manner if his real intention was to guide her to work on the PowerPoint slides. The Inquiry Panel took the view that Dr HO's real intention was to indecently hug and touch Complainant E, and it was all done without her consent. In the view of the Inquiry Panel, Dr HO's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. He was therefore found guilty of misconduct in a professional respect under charge (b).

13. Complainant D said that on 6 December 2016, she was assigned to participate in an operation (laparoscopic resection of colon) on a 62-year old female patient at Operating Theatre of NDH. During anesthetic induction, after endotracheal tube insertion, she said Dr HO hugged her from the back with the excuse of reaching equipment (reservoir bag of anaesthetic circuit). Dr HO stood behind her and passed the reservoir bag from his left hand to his right hand in front of her body, such that her body was encircled by his arms, with his upper trunk touching her back. She also said Dr HO's upper arm might also have contact with her, but not Dr HO's forearms and hands (“咁可能佢上臂都有掂到我囉，但係你問我，你話個前臂同埋手呢，就一定掂唔到我... 係啦，即係個前臂就有掂到我，係喇”). She also agreed during cross-examination that the hugging was not vigorous (“唔會好大力”). She said it was touching, not pressing (“係，掂到... 唔係壓住”). She was immobilized at the time as she was securing the position of endotracheal tube by holding it with both hands during its fixation. The hugging was brief and stopped before she could verbally react. She was angry when she noticed such act. It was not an accidental touch as it was unnecessary for him to reach that equipment at that particular time. Even if he had to reach for that equipment, he could have asked her to move to the side or she could reach the equipment herself.

14. Complainant D said she expressed her distress to the Operation Theatre Assistant after the event. When she went for tea break, she shared it with other female colleagues in the tea room. She had also sent a message *via* Whatsapp at time 3:21 p.m. on the same day. The Inquiry Panel had looked at the Whatsapp record, which appeared to be a photo of a phone screen. There was record of entries sent out on date “6 Dec 2016” at “3:21 p.m.” One entry read “I’m so angry now”. Another entry read “I suffered from salty pig hand from hkm again”. Complainant D said that “hkm” in the entry meant Dr HO. There was really nothing in cross-examination which could undermine the authenticity and contemporaneity of the Whatsapp record. The Inquiry Panel accepted the Whatsapp record as authentic and contemporaneous.

15. The Inquiry Panel bore in mind that the incident happened quite some time ago, and usually the memory of witness might not be too accurate due to the lapse of time. The Inquiry Panel accepted that due to the lapse of time, Complainant D might not be able to remember every non-essential or minor details. However, in relation to the core and essential matters, for instance, how Dr HO hugged her from the back and without her consent, she could remember clearly. Her evidence was direct, straightforward and consistent. The Inquiry Panel did not see any part of her testimony was exaggerated. Her evidence was honest and reliable. The Inquiry Panel found that Dr HO had hugged her from the back without her consent.

16. The Inquiry Panel did not accept that the hugging from the back was necessary. The reservoir bag was already not in use at the time. The patient was not in respiratory desaturation. There was no reason that Dr HO had to choose that particular moment, when Complainant D was busy with both her hands, to place the reservoir bag back to its original position. It was very unusual that Dr HO had to choose that moment. Dr HO could have done it later or he could have asked Complainant D to do it later. Dr HO should know that if he chose that moment to place the reservoir bag back to its original position in the way he did, his hands would clearly encircle the body of Complainant D, and there would inevitably be body contacts. That was exactly what happened, in that his upper arms and his upper trunk had contacts with Complainant D. Complainant D was not even close friend or acquaintance with Dr HO. The situation simply did not permit Dr HO to have such close contact with Complainant D. The

Inquiry Panel was satisfied that the act of hugging Complainant D from the back offended the contemporary standards of modesty and privacy, which right-minded persons would clearly think was indecent. The Inquiry Panel was satisfied that Dr HO intended to commit such indecent act on Complainant D. In the view of the Inquiry Panel, Dr HO's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. He was therefore found guilty of misconduct in a professional respect under charge (c).

17. Taking into consideration the nature and gravity of the disciplinary charge and the mitigation advanced by Dr HO, the Inquiry Panel ordered that:—

- (i) in respect of disciplinary charge (a), Dr HO's name be removed from the General Register ("GR") for a period of 6 months;
- (ii) in respect of disciplinary charge (b), Dr HO's name be removed from the GR for a period of 4 months;
- (iii) in respect of disciplinary charge (c), Dr HO's name be removed from the GR for a period of 4 months; and
- (iv) the above removal orders to run concurrently.

18. The Inquiry Panel had considered whether to impose a suspension order, but did not find a suspension order appropriate.

19. Pursuant to the Inquiry Panel's orders, Dr HO's name has been removed from the General Register on 20 October 2023; and pursuant to section 19(B)(1) of the Medical Registration Ordinance, Dr HO's name has also been removed from the Specialist Register on the same day.

20. 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-yee, Joseph *Chairman, The Medical Council of Hong Kong*