

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr YUEN Leonard Hsu (源旭醫生) (Reg. No.: M13826)

Date of hearing: 31 October 2022 (Monday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr CHUNG Kin-lai
Dr WAI Yuk-chun, Veronica
Ms HUI Mei-sheung, Tennessy, MH, JP
Mr HUI Cheuk-lun, Lawrence

Legal Adviser: Mr Edward SHUM

Government Counsel representing the Secretary: Mr Louis POON

Defence Solicitor representing the Defendant: Mr Chris HOWSE of
Messrs. Howse Williams

1. The amended charges against the Defendant, Dr YUEN Leonard Hsu, are

“That he, being a registered medical practitioner:

- (a) was convicted at the Kowloon City Magistrates’ Courts on 19 June 2018 of the offence of driving a motor vehicle with alcohol concentration in breath exceeding the prescribed limit (Tier II), which is an offence punishable with imprisonment, contrary to Section 39A(1) of the Road Traffic Ordinance, Chapter 374, Laws of Hong Kong; and
- (b) has been guilty of misconduct in a professional respect in that he failed to report to the Medical Council the conviction mentioned in paragraph (a) above within 28 days of the conviction, contrary to section 29.1 of the Code of Professional Conduct published in January 2016.”

Facts of the case

2. The name of the Defendant was at all material times and still is included in the General Register. Also, his name was at all material times and still is included in the Specialist Register under the specialty of Ophthalmology.
3. There is no dispute that the Defendant was convicted on his own plea at the Kowloon City Magistrates' Courts on 19 June 2018 of the offence of driving a motor vehicle with alcohol concentration in breath exceeding the prescribed limit (Tier II) i.e. over 35 but below 66 micrograms of alcohol in 100 millilitres of breath, which was at all material times and still is an offence punishable with imprisonment, contrary to section 39A(1) of the Road Traffic Ordinance, Chapter 374 of Laws of Hong Kong.
4. As a result of the said conviction, on 10 July 2018, the Defendant was fined \$5,000, disqualified from holding or obtaining a driving licence for all classes for 12 months; and ordered to attend and complete a driving improvement course at his own cost within the last 3 months of the disqualification period.
5. Although the Defendant had declared the said conviction in his application form dated 30 October 2018 for renewal of annual practicing certificate for 2019, there is no dispute that the Defendant failed to report to the Medical Council (the "Council") the said conviction within 28 days of the conviction, contrary to section 29.1 of the Code of Professional Conduct published in January 2016 (the "Code").

Findings of the Inquiry Panel

6. Section 21(3) of the Medical Registration Ordinance (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.'
7. The Inquiry Panel is therefore entitled to take the said conviction as conclusively proven against the Defendant. Accordingly, we find the Defendant guilty of the disciplinary charge (a).
8. According to the Brief Facts of the Case prepared by the Police and upon which the Defendant was convicted of the said offence, the Defendant was driving along Hung Hom Bypass at around 00:33 hours on 13 May 2018 when he was intercepted by the Police, which was then conducting an Anti-Drink Operation. The Defendant was asked to undergo a Screening Breath Test at 00:40 hours, which indicated that his breath had 41 micrograms of alcohol in 100 millilitres of breath. The Police then

declared arrest of the Defendant and escorted him back to Hung Hom Police Station. The Defendant later underwent an Evidential Breath Test at 01:33 hours with the result that his breath had 37 micrograms of alcohol in 100 millilitres of breath.

9. Before sentencing the Defendant, the learned Magistrate called for a Background & Community Service Order Report (“the Report”). A copy of the Report was submitted by the Defendant through his solicitors to the Preliminary Investigation Committee of the Council and is placed before us for our consideration today.
10. We noted from reading the Report that the Defendant’s wife told the probation officer, who prepared the Report, that the Defendant all along enjoyed a healthy lifestyle and he had *‘no vice habits like, smoking..., being alcoholic, taking drugs...’*. According to the Defendant, he and his wife were invited to join a fundraising dinner organized by the New Sight Eye Care, a charity group through which he participated in voluntary medical services for needy people in developing countries. The probation officer also observed in the Report that the Defendant *‘showed a deep remorse to have contravened the law and attributed his commission of the present offence to his wrong decision to drive back home after drinking on the night-in-question and his underestimation on the risks and legal consequences of drink-driving.’*
11. Turning to disciplinary charge (b), it is clearly stated in section 29.1 of the Code that *‘...Failure to report within the specified time will in itself be ground for disciplinary action. In case of doubt the matter should be reported.’*
12. In our view, the Defendant’s failure to report the said conviction to the Council within the specified time is inexcusable and his conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore also find the Defendant guilty of professional misconduct as per disciplinary charge (b).

Sentencing

13. The Defendant has one previous disciplinary conviction on 3 August 2021 in respect of practice promotion. The Defendant’s name was ordered to be removed from the General Register for 1 month, to be suspended for a period of 3 months.
14. The criminal offence in the present case was not committed within the suspension period of the said removal order. We shall therefore not activate the suspended removal order. We also consider that the previous disciplinary conviction and today’s conviction are of different nature.
15. In line with our published policy, we shall give the Defendant credit in sentencing for his admission and cooperation throughout 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 the Defendant must necessarily be of a lesser extent than in other cases.

16. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant for the criminal offence for a second time, but to protect the public from persons who are unfit to practise medicine and to maintain public confidence in the medical profession by upholding its good reputation and high standards.
17. Driving a motor vehicle whilst under the influence of alcohol is a serious offence. It was mere luck that no one had been injured in this case. The Defendant, being a registered medical practitioner, ought to know better than any lay person the effect of alcohol on driving. Indeed, the Defendant frankly admitted to the probation officer the seriousness of his misdeed.
18. Taking into consideration the nature and gravity of the disciplinary charges and what we have read and heard in mitigation, we shall make a global order in respect of charges (a) and (b) that a warning letter be issued to the Defendant. We further order that our said order be published in the Gazette.

Remark

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

Prof. LAU Wan-ye, Joseph, SBS
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong