香 港 醫 務 委 員 會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr TSE Boon Keung (謝本強醫生) (Reg. No.: M02246)
Date of hearing: 15 November 2016

Present at the hearing
Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS (Chairman)
Dr Hon CHAN Pierre
Dr HO Chung-ping, MH JP
Dr HO Pak-leung
Mr YU Kwok-kuen, Harry
Prof. TAN Choon-beng, Kathryn
Dr MOK Pik-tim, Francis

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Woody CHANG of Messrs. Mayer Brown JSM
Senior Government Counsel representing the Secretary: Mr Mark CHAN
Government Counsel representing the Secretary: Ms Carmen SIU

1. The amended charge(s) against the Defendant, Dr TSE Boon Keung, are

First case (MC 14/115)

"That, in or around 2010 to October 2013, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [redacted] ("the Patient") in that:

(a) he prescribed Cordarone to the Patient without proper justification; and
(b) he failed to pay proper regard to causing harm to the Patient in so doing.

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

Second Case (MC 15/017)

"That he, being a registered medical practitioner, was convicted at the Shatin Magistrates' Courts on 29 December 2014 of the offence of failing to keep a Register of Dangerous Drugs in the specified form, which is an offence punishable with imprisonment, contrary to Regulations 5(1)(a) and 5(7) of the Dangerous Drugs Regulations made under the Dangerous Drugs Ordinance, Chapter 134, Laws of Hong Kong."

Facts of the case

2. The Defendant was at all material times a registered medical practitioner and still is included in the General Register. His name has never been included in the Specialist Register.

First Case

3. In between May 2007 and October 2013, the Patient in the first case underwent a health maintenance programme provided by one La Clinique De Paris (HK) Limited ("La Clinique"). This programme included monthly medical consultations, annual body checkups, follow-up blood testing (if necessary), prescription of preventive medicine for anti-aging & etc.

4. According to the Defendant, he worked at La Clinique as a general practitioner from 1 December 2000 to 31 October 2013. The Defendant first saw the Patient at La Clinique on 28 March 2008. Thereafter, the Patient continued to consult the Defendant regularly pursuant to the health maintenance programme.

5. There is no dispute that the Defendant started to prescribe Cordarone (amiodarone), an antiarrhythmic medication used to treat a number of types of irregular heartbeats, to the Patient in or around August 2010.

6. There is conflicting evidence on the reason(s) for this prescription. According to the Defendant, the Patient presented with chest discomfort and palpitation when she consulted him in or around August 2010. Although her blood pressure and resting heart rate were normal and physical examination findings were unremarkable, the Defendant found on auscultation of her heart that her heartbeats were irregularly irregular. A diagnosis of atrial fibrillation was made and he then advised the Patient to take Cordarone in order to put her heartbeat

back into normal rhythm and to reduce the risks of her suffering from a stroke or heart attack.

7. The Patient disagreed. Although she was prepared to accept that Cordarone was mentioned in the prescription sheet given to her after the consultation as a medication for prevention of atrial fibrillation, she insisted in her complaint letters to the Medical Council that her heart functions were normal when she consulted the Defendant in or around August 2010.

8. However that may be, the Defendant frankly admitted that he prescribed Cordarone to the Patient without proper justification; and in so doing, he also failed to pay proper regard to causing harm to the Patient. In this connection, there is no dispute that the Defendant increased the dosage from 100 mg per day initially to 200 mg per day in December 2010 and then to 400 mg per day in March 2011 without carrying out any test (other than a CT coronary angiogram which showed no abnormality) to verify the diagnosis of atrial fibrillation.

9. It is unchallenged evidence of the Patient that she consulted one Dr Ignatius LAM, a specialist in internal medicine, on 2 December 2013 complaining of chest discomfort, tiredness, palpation, on and off dizziness and shortness of breath for a period of 2 months. In view of the sinus bradycardia and her symptoms of on and off dizziness and tiredness, Dr LAM advised the Patient to go back to La Clinique to find out why she had to take Cordarone and whether it could be stopped.

10. It is not entirely clear from the evidence whether the Patient did go back to La Clinique on 2 December 2013. There is however no dispute that the Patient consulted Dr Peter KING, a cardiologist of Hong Kong Adventist Hospital, for cardiology evaluation on 3 December 2013. According to Dr KING's medical report on the Patient, cardiac examination revealed regular rate and rhythm. No murmurs or gallops were noted. Moreover, the Patient underwent treadmill exercise test and no arrhythmias was noted. However, the Patient was found to have bradyrhythmia and she was advised to undergo repeat Holter study, echocardiogram and further evaluation of bradyrhythmia and the need for permanent pacemaker implementation. Dr KING also recommended her to reduce the dosage or stop Cordarone to see if her heart rate would increase.

Second Case

11. On 25 July 2014, pharmacists from the Department of Health inspected the Defendant's clinic and found different dangerous drugs. The Defendant was asked to produce the relevant dangerous drugs registers for inspection. The Defendant then presented a loose paper in which he claimed all the dangerous drugs registers were kept.

12. In the presence of the Defendant, pharmacists from the Department of Health checked the physical stock of dangerous drugs against the balance shown in his dangerous drugs records. It was found that the physical stock of Sedapam (diazepam) 2 mg tablets did not tally with the balance shown in the corresponding dangerous drug record and 25 tablets were found to be missing.

13. It was also found out that the dangerous drugs records made by the Defendant were of a different format from the statutory form specified in the First Schedule to the Dangerous Drugs Regulations, Cap. 134A. Moreover, address of person or firm from whom the dangerous drugs were received or to whom supplied and invoice number were missing from the Defendant's dangerous drugs records.

14. The Defendant was subsequently charged with the offence of "failing to keep a register of dangerous drugs in the specified form", contrary to regulations 5(1)(a) and 5(7) of the Dangerous Drugs Regulations, Cap.134A.

15. The Defendant was convicted on his own plea of the aforesaid offence at the Shatin Magistrates' Court on 29 December 2014 and was fined a sum of $1,800.

16. There is no dispute that the aforesaid offence is punishable with imprisonment.

Burden and Standard of Proof

17. We bear in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove his innocence. We also bear in mind that the standard of proof for disciplinary proceedings is the preponderance of probability. However, the more serious the act or omission alleged, the more inherently improbable must it be regarded. Therefore, the more inherently improbable it is regarded, the more compelling the evidence is required to prove it on the balance of probabilities.

18. Although the Defendant does not contest the disciplinary charge against him in the First Case, it remains our duty to determine whether the allegations in the amended charge have been proven and that they constitute professional misconduct.

19. As to the Second Case, section 21(3) of the Medical Registration Ordinance expressly provides that:-

> "Nothing in this section shall be deemed to require the Council to inquire into the question whether the registered medical practitioner was properly convicted but the Council 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."

20. The Medical Council is therefore entitled to take the aforesaid conviction as conclusively proven against the Defendant.

Findings of the Council

First Case

21. It is clearly stated in the Code of Professional Conduct ("the Code") that a doctor may prescribe medicine to a patient only after proper consultation and only if drug treatment is appropriate.

22. We appreciate that the Defendant prescribed Cordarone to the Patient on faith of the diagnosis that he had made. However, leaving aside whether the diagnosis of atrial fibrillation was rightly made, we agree with the unchallenged evidence of the Secretary's expert, Dr TANG, that the Defendant should at least consider if immediate drug treatment was necessary in the circumstances. And even if immediate drug treatment was found to be necessary, the Defendant should firstly arrange for the Patient to undergo a 12 leads electrocardiogram ("ECG") to verify the diagnosis of atrial fibrillation and to rule out other cause(s) of irregular heart rhythm. Moreover, this would form the baseline for any subsequent ECG, if required.

23. However that may be, the Defendant was unable to give any satisfactory explanation why he increased the dosage of Cordarone from 100 mg/ day to 200 mg/day and then to 400 mg/day. In our view, the Defendant could not safely

rely upon the normal liver and thyroid function tests to justify his continual prescription and let alone increase in dosage of Cordarone. Without verifying the diagnosis of atrial fibrillation in the first place, the Defendant ought to have arranged for an ECG before increasing the dosage.

24. In our view, the Defendant's conduct had clearly fallen below the standards reasonably expected of registered medical practitioners in Hong Kong. We therefore find him guilty of professional misconduct as per the disciplinary charge in the First Case.

Second Case

25. With regard to the Second Case, we are entitled to treat the aforesaid conviction as conclusively proven against the Defendant. Accordingly, we have no hesitation to find the Defendant guilty of the disciplinary offence as charged.

Sentencing

26. The Defendant has a clear record.

27. In line with published policy, we shall give him credit for his frank admission in this inquiry and cooperation during the preliminary investigation stage. However, given that there is hardly any room for dispute in a disciplinary case involving criminal conviction, the credit to be given to him in relation to the Second Case must necessarily be of a lesser extent than in other cases.

28. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant for the aforesaid 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 the high standards and good reputation of the profession.

29. The Medical Council has repeatedly emphasized the importance of proper record of dangerous drugs in compliance with the statutory requirements. Medical practitioners being given the legal authority to supply dangerous drugs must diligently discharge the corresponding responsibility to keep records in the prescribed form. As a matter of fact, the dangerous drugs register is a simple form which can be filled in as a clerical exercise whenever drugs are received or dispensed, and there is nothing complicated about it. Any medical practitioner

exercising proper care would have no difficulty at all in complying with the statutory requirements.

30. In the recent years, all cases of failing to comply with the statutory requirements to keep proper dangerous drugs register have been dealt with by removal from the General Register, and in less serious cases the operation of the removal order would be suspended for a period with the condition of peer audit.

31. We are told in mitigation that the Defendant has since taken steps to comply with the statutory requirement for keeping dangerous drugs registers. In addition, he would personally audit his dangerous drugs registers every week.

32. We accept that the Defendant has learnt his lesson and the chance of his repeating the same or similar breach will be low.

33. As to the First Case, the Defendant sought to justify his prescription of Cordarone by relying upon oral confirmation from his cardiologist colleague, Dr Gary MAK. In our view, the gravamen of the amended charges against the Defendant lies in his overall management of the Patient for a lengthy period of over 3 years. His failure to arrange for an ECG to verify the diagnosis of atrial fibrillation was inexcusable. His continual prescription and increase in dosage were unjustified. This also reflected on his competence to practice medicine.

34. We were told in mitigation that the Defendant had joined in January 2016 the Atrial Fibrillation Screening Programme organized by the University of Hong Kong and he also attended CME lectures and workshops regularly in order to upkeep his medical knowledge, particularly about the use of drugs, in order to avoid similar incidents from happening. Whilst he might have good intentions all along, he ought to know that in the practice of evidence based medicine, genuine belief is not enough. After making a preliminary diagnosis, the Defendant ought to consider what further investigations that could help him to substantiate his bedside diagnosis before formulating his subsequent treatment plan and to review the Patient's medical progress and treatment from time to time. Regrettably, the Defendant did not seem to have sufficient insight into his wrongdoings.

35. We accept that there is insufficient evidence to enable us to determine whether the Patient's pre-existing condition of bradycardia had been aggravated by taking Cordarone. However, by managing the Patient in the way that he did,

the Defendant exposed her to potential significant adverse effects which might in rare cases even be fatal.

36. Taking into consideration the nature and gravity of the disciplinary offence and what we have read and heard in mitigation, we shall make a global order in respect of the First and Second Cases that the Defendant's name be removed from the General Register for a period of 2 months. We have considered carefully whether the operation of the removal order should be suspended. In view of our observations in paragraphs 34 and 35 above, we do not consider it appropriate to suspend the operation of the removal order.

Prof. LAU Wan Yee Joseph, SBS
Chairman, Medical Council