

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr YAU Kwok Hing (丘國慶醫生)(Registration no : M07631)

Date of hearing: 17 January 2017

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS (Chairman)
Dr LAI Kit-lim, Cindy, JP
Dr LAU Chor-chiu, GMSM MH JP
Dr LEUNG Chi-chiu
Mr YU Kwok-kuen, Harry
Prof. CHAN Tak-cheung, Anthony
Ms HUI Mei-sheung, Tennessy, MH JP

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Warren Se-to of Messrs.
Mayer Brown JSM

Senior Government Counsel representing the Secretary: Miss Carmen POON

1. The charge against the Defendant, Dr YAU Kwok Hing, is :

“That he, being a registered medical practitioner, was convicted at the Tuen Mun Magistrates’ Courts on 12 December 2013 of eleven counts of an offence punishable with imprisonment, namely “Failing to keep a Register of Dangerous Drugs in the form specified in the First Schedule”, contrary to Regulation 5(1)(a) and 5(7) of the Dangerous Drugs Regulations made under Dangerous Drugs Ordinance, Chapter 134, Laws of Hong Kong.”

Facts of the case

2. The Defendant was at all material times and still is included in the General Register as registered medical practitioner. His name is not included in the Specialist Register.

3. The Defendant admitted the disciplinary charge against him.
4. On 20 May 2013, pharmacists from the Department of Health visited the Defendant's clinic for an inspection of dangerous drugs. The Defendant was asked to produce all dangerous drugs and the relevant dangerous drugs registers for inspection. The Defendant produced 9 notebooks which he claimed were the only registers that he used for keeping dangerous drugs records in the recent 2 years.
5. Pharmacists from the Department of Health then 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. Name and address of person or firm from whom the dangerous drugs were received, date of receipt, amount received, invoice number and balance of dangerous drugs were all missing from the Defendant's dangerous drugs records.
6. Pharmacists from the Department of Health also inspected and counted all the dangerous drugs in the presence of the Defendant. It was found out that 17 bags comprising 10 preparations of dangerous drugs, totaling 9,920 tablets and 19,568 capsules, had not been recorded in the Defendant's dangerous drugs registers. All of these dangerous drugs were later seized from the Defendant's clinic.
7. On 22 May 2013, the Defendant informed the Department of Health that he found some more dangerous drugs in a locked cabinet in his consultation room. On 28 May 2013, Pharmacists from the Department of Health visited the Defendant's clinic again and seized the said dangerous drugs, totaling 1,136 capsules.
8. The Defendant was subsequently charged with 11 counts of "failing to keep a register of dangerous drugs in the form specified in the First Schedule", contrary to regulations 5(1)(a) and 5(7) of the Dangerous Drugs Regulations, Cap.134A.
9. The Defendant was convicted on his own plea of the aforesaid offences at the Tuen Mun Magistrates' Court on 12 December 2013 and was fined a total sum of \$22,000.

10. There is no dispute that the aforesaid offences are punishable with imprisonment.

Findings of the Council

11. 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.”

12. The Council is therefore entitled to take the aforesaid convictions as conclusively proven against the Defendant.
13. Accordingly, we also find the Defendant guilty of the disciplinary offence as charged.

Sentencing

14. The Defendant has a clear disciplinary record.
15. In accordance with our published policy, we shall give him credit in sentencing for admitting the disciplinary charge against him and his cooperation throughout these disciplinary proceedings. However, given that there is hardly any room for dispute in a disciplinary case involving criminal convictions, the credit to be given to him must necessarily be of a lesser extent than in other cases.
16. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant, but to protect the public from persons who are unfit to practise medicine and to maintain the public confidence in the medical profession by maintaining its professionalism and upholding its good reputation.
17. The 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.

18. 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.
19. We are told in mitigation that the Defendant has since the conviction ceased to order and keep any dangerous drugs in his clinic.
20. We accept that the Defendant has learnt his lesson and the chance of his committing the same or similar disciplinary offence will be low.
21. Taking into consideration the nature and gravity of the disciplinary offence and what we have read and heard in mitigation, we order that the Defendant's name be removed from the General Register for a period of 2 months, and the operation of the removal order be suspended for a period of 12 months, subject to the condition that the Defendant shall complete during the suspension period satisfactory peer audit by a Practice Monitor to be appointed by the Council with the following terms:-
 - (a) the Practice Monitor shall conduct random audit of the Defendant's practice with particular regard to the keeping of dangerous drugs registers;
 - (b) the peer audit should be conducted without prior notice to the Defendant;
 - (c) the peer audit should be conducted at least once every 6 months during the suspension period;
 - (d) during the peer audit, the Practice Monitor should be given unrestricted access to all parts of the Defendant's clinic and the relevant records which in the Practice Monitor's opinion is necessary for proper discharge of his duty;

- (e) the Practice Monitor shall report directly to the Chairman of the Council the finding of his peer audit at 6-monthly intervals. Where any defects are detected, such defects should be reported to the Chairman of the Council as soon as practicable;
- (f) in the event that the Defendant does not engage in active practice at any time during the suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until the completion of 12 months suspension period; and
- (g) in case of change of Practice Monitor at any time before the end of the 12 months suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until another Practice Monitor is appointed to complete the remaining period of peer audit.

Prof. LAU Wan-ye, Joseph, SBS (Chairman)
Chairman, Medical Council