

香港醫務委員會

The Medical Council of Hong Kong

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**DISCIPLINARY INQUIRY**  
**MEDICAL REGISTRATION ORDINANCE, CAP. 161**

Defendant: Dr YEUNG Ka Cheung (楊嘉祥醫生) (Reg. No.: M03812)

Date of hearing: 9 August 2016 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS (Chairman)  
Miss CHAU Man-ki, Mabel, MH  
Dr LAI Kit-lim, Cindy, JP  
Dr HUNG Se-fong, BBS  
Dr KHOO Lai-san, Jennifer  
Dr KONG Wing-ming, Henry

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 charges against the Defendant, Dr YEUNG Ka Cheung, are:

1<sup>st</sup> Complaint (MC 13/160)

“That on or about 10 January 2013, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] (transliteration of [REDACTED], “the Patient”) in that the medicine name “Acyclovir” was written on a medicine bag given to the Patient but in fact “Amlodipina Farnoz 5 mg” was dispensed.

In relation to the facts alleged, he has been guilty of misconduct in a professional respect.”

## 2<sup>nd</sup> Complaint (MC 13/333)

“That he, being a registered medical practitioner:

- (a) was convicted at the Tsuen Wan Magistrates’ Courts on 3 September 2013 of an offence punishable with imprisonment, namely, “selling a drug not of the quality demanded by the purchaser”, contrary to sections 52(1) and 150 of the Public Health and Municipal Services Ordinance, Chapter 132, Laws of Hong Kong;
- (b) was convicted at the Tsuen Wan Magistrates’ Courts on 3 September 2013 of an offence punishable with imprisonment, namely, “selling a drug with a label which falsely describes the drug”, contrary to sections 61(1) and 150 of the Public Health and Municipal Services Ordinance, Chapter 132, Laws of Hong Kong; and
- (c) was convicted at the Tsuen Wan Magistrates’ Courts on 3 September 2013 of three counts of an offence punishable with imprisonment, namely, “failing to keep record of a dangerous drug supplied”, contrary to regulations 5(1)(a) and 5(7) of the Dangerous Drugs Regulations made under Dangerous Drugs Ordinance, Chapter 134, Laws of Hong Kong.

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

### **Facts of the case**

- 2. The Defendant was at all material times and still is included in the General Register. His name has also been included in the Specialist Register under the specialty of Paediatrics since 4 March 1998 to present.
- 3. There is no dispute that the Patient was brought by her mother, Madam [REDACTED], (“the Complainant”) to consult the Defendant on 10 January 2013 for the Patient’s cold sore. At that time, the Patient was around 34 months old. After the consultation, the Defendant prescribed, amongst other medicines, Acyclovir 400 mg half tablet, 3 times a day to treat the Patient’s cold sore.
- 4. After the Patient returned home, the Complainant gave her the medicines prescribed by the Defendant. However, the Complainant subsequently found out that the tablets contained in the Defendant’s medicine bag with the handwritten

name “Acyclovir” on it were in fact “Amlodipina Farmoz 5 mg”, a medicine for treating hypertension.

5. Worrying about possible adverse effects that “Amlodipina Farmoz 5 mg” might have on the Patient, the Complainant and her husband brought the Patient to see the Defendant again on 14 January 2013. The Defendant immediately apologized for the dispensing error. He offered to refer the Patient to see another specialist in paediatrics who could make arrangement for the Patient’s admission to a private hospital for further investigation and management if necessary. According to the Defendant, he called the Patient’s father over the following few days to follow up on the Patient’s condition and was told the Patient was fine.
6. Meanwhile, the Complainant also reported the dispensing error to the Department of Health (“DH”). On 16 January 2013, DH officers went to the Defendant’s clinic to investigate. Upon inspection of the Defendant’s dangerous drugs register, DH officers found that it was not in compliance with the Dangerous Drugs Regulations and there were discrepancies in respect of the balance recorded on the register and the physical stocks found in the Defendant’s clinic.
7. The Defendant was subsequently charged and convicted on his own plea on the dangerous drugs offences mentioned in charge (c) of the 2<sup>nd</sup> Complaint above.
8. In respect of the dispensing error, the Defendant was further charged and convicted on his own plea of the 2 offences contrary to the Public Health and Municipal Services Ordinance mentioned in charges (a) and (b) of the 2<sup>nd</sup> Complaint above.
9. There is no dispute that the aforesaid offences are punishable with imprisonment.

### **Burden and Standard of Proof**

10. 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.

11. There is no doubt that the allegation made against the Defendant here is a serious one. Indeed, it is always a serious matter to accuse a registered medical practitioner of misconduct in a professional respect. Therefore, we need to look at all the evidence and to consider and determine the above disciplinary charge against him carefully.

### **Findings of the Council**

12. Although the Defendant does not challenge the factual particulars of the disciplinary charge against him under the 1<sup>st</sup> Complaint, it remains our duty to consider and determine whether he is guilty of misconduct in a professional respect.
13. Medical practitioners in Hong Kong are in a unique position that they can both prescribe and dispense medicine to their patients. Dispensation of wrong medicines may lead to dire consequences to their patients. Accordingly, any doctor who dispenses medicine to his patient has the personal responsibility to ensure that the medicine is in fact the one prescribed by him before it is handed over to his patient.
14. In the circumstances of this case, it was fortunate that the Patient had not developed significant adverse reactions after taking the wrong medicine. Whilst clinical assistants, if properly trained, might assist the Defendant to fill the prescription, short of double-checking the medicines personally, the Defendant could not be considered as having properly fulfilled his personal responsibility to ensure that the correct medicines were dispensed strictly in accordance with his prescription.
15. In our view, the Defendant's conduct had fallen below the standard reasonably expected of medical practitioners in Hong Kong. We therefore find the Defendant guilty of the disciplinary charge laid against him in respect of the 1<sup>st</sup> Complaint.
16. In respect of the 2<sup>nd</sup> Complaint, section 21(3) of the Medical Registration Ordinance ("MRO") 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.”

17. The Council is therefore entitled to take the said convictions as conclusively proven against the Defendant.
18. Accordingly, we also find the Defendant guilty of all the disciplinary offences mentioned in the 2<sup>nd</sup> Complaint.

### **Sentencing**

19. The Defendant has a clear disciplinary record.
20. 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 convictions, the credit to be given to him in respect of the disciplinary offences in the 2<sup>nd</sup> Complaint must necessarily be of a lesser extent than in other cases.
21. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant for the offences 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.
22. It was fortunate that the Patient did not develop significant adverse reactions after taking the wrong medicine. However, the anxiety or distress that her parents might develop after realizing that their young daughter had taken wrong medicine should not be overlooked.
23. We were told in mitigation that the Defendant has since the incident taken a number of steps to improve his practice in order to prevent dispensing errors in future and in particular to make sure that all medicines have been checked by him personally before dispensation. Apart from checking his dangerous drugs register every day, he has also limited the type of dangerous drug at his clinic to 1 in order to minimize the chance of error.

24. 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.
25. 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.
26. We accept that the Defendant has learnt his lesson and the chance of his repeating the same or similar dispensing error and/or further breach of Dangerous Drugs Regulations will be low.
27. Taking into consideration the nature and gravity of the disciplinary charge in the 1<sup>st</sup> Complaint and the disciplinary offences (a) and (b) in the 2<sup>nd</sup> Complaint and what we have read and heard in mitigation, we shall make a global order that the Defendant's name be removed from the General Register for a period of 1 month, 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 dispensation of medicines and 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 month suspension period; and
- (g) in case of change of Practice Monitor during the 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.

- 28. As to the disciplinary offence (c) in the 2<sup>nd</sup> Complaint, we shall order that the Defendant's name be removed from the General Register for a period of 1 month, and the operation of the removal order be suspended for a period of 12 months, subject to the same peer audit conditions as mentioned in paragraph 27 above.
- 29. We further order that the 2 removal orders to run consecutively, making a total of 2 months and be suspended for a period of 12 months.

Prof. LAU Wan-yee, Joseph, SBS  
Chairman, Medical Council