

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHUANG Hsiu Min Sammy (莊秀民醫生) (Reg. No.: M11309)

Date of hearing: 16 November 2021 (Tuesday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr LEE Wai-hung, Danny
Dr CHAN Pik-kei, Osburga
Mr MUI Cheuk-nang, Kenny
Ms CHENG Hoi-yue, Vivian

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Ms Jennifer LEE of
Messrs. Mayer Brown

Government Counsel representing the Secretary: Ms Sylvia LEE

1. The amended charges against the Defendant, Dr CHUANG Hsiu Min Sammy, are:

“That he, being a registered medical practitioner:

- (a) was convicted at the Kowloon City Magistrates’ Courts on 11 July 2019 of the offence of using vehicle without insurance, which is an offence punishable with imprisonment, contrary to Sections 4(1) and 4(2) of the Motor Vehicle Insurance (Third Party Risks) Ordinance, Chapter 272, Laws of Hong Kong;
- (b) was convicted at the Kowloon City Magistrates’ Courts on 11 July 2019 of the offence of driving / using an unregistered / unlicensed vehicle, which is an offence punishable with imprisonment, contrary to Sections 52(1)(a) and 52(10)(a) of the Road Traffic Ordinance, Chapter 374, Laws of Hong Kong; and/or

- (c) has been guilty of misconduct in a professional respect in that he failed to report to the Medical Council the convictions mentioned in paragraphs (a) and (b) above within 28 days from the convictions, contrary to section 29.1 of the Code of Professional Conduct published in January 2016, in relation to the facts alleged, he has been guilty of misconduct in a professional respect.”

Facts of the case

2. The name of the Defendant has been included in the General Register from 2 January 1997 and to the present. His name has been included in the Specialist Register under the specialty of General Surgery since 7 February 2007.
3. There is no dispute that the Defendant was convicted on his own plea of the said two offences at the Kowloon City Magistrates’ Courts on 11 July 2019.
4. There is also no dispute that the Defendant did not report his criminal conviction to the Medical Council within 28 days from 11 July 2019. The Defendant first reported his conviction of the offence of “*Using vehicle without insurance*” to the Medical Council by letter dated 30 October 2019. It was not until 16 November 2020 that the Defendant reported through his solicitors to the Medical Council by letter of his conviction of the offence of “*Driving / using unregistered / unlicensed vehicle*”.

Burden and Standard of Proof

5. 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.

Findings of the Inquiry Panel

6. There is no dispute that the said two offences were and still are punishable with imprisonment. By virtue of section 21(1) of the Medical Registration Ordinance (“MRO”), Cap. 161, Laws of Hong Kong, our disciplinary powers against the Defendant are engaged.

7. Section 21(3) of the 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.”

8. We are therefore entitled to take the said criminal conviction as conclusively proven against the Defendant.

9. Accordingly, we also find the Defendant guilty of the amended disciplinary charges (a) and (b).

10. Turning to the amended disciplinary charge (c), we need to bear in mind that it is always a serious matter to accuse a registered medical practitioner of misconduct in a professional respect. Although the Defendant admits the factual particulars of that charge and has indicated through his solicitor that he is not going to contest these disciplinary proceedings, it remains for us to consider and determine on all the evidence whether the Defendant’s conduct has fallen below the standards expected of registered medical practitioners in Hong Kong.

11. We noted from reading the Statement of Agreed Facts upon which the Defendant was convicted of the said two offences that the vehicle involved had been unregistered and without third party insurance for some 19 and 26.5 months respectively.

12. Driving an unregistered vehicle and especially one without third party insurance are serious matters. The Defendant told the Preliminary Investigation Committee that he was aware of the requirement to report criminal conviction of an offence punishable with imprisonment to the Medical Council but he was under the mistaken impression that he did not have to report because he *“consulted the police and was told that traffic offences were not criminal offences.”*

13. It is however clearly stated in section 29.1 of the Code of Professional Conduct (2016 edition) that:

“A doctor who has been convicted in or outside Hong Kong of an offence punishable with imprisonment or has been the subject of adverse findings in disciplinary proceedings by other professional regulatory bodies is required to report the matter to the Council within 28 days from the conviction or the adverse disciplinary finding, even if the matter is under appeal. Failure to report within the specified time will in itself be ground for disciplinary action. In case of doubt the matter should be reported.”

14. It follows in our view that the Defendant should take all reasonable steps to find out whether his criminal conviction needed to be reported to the Medical Council. He could not simply rely on what the Police had told him. In case of doubt, the Defendant ought to report his criminal conviction in accordance with section 29.1 of the Code. The Defendant's failure to report his criminal conviction within the specified time was in our view inexcusable.
15. For these reasons, the Defendant has in our view by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of professional misconduct as per the amended disciplinary charge (c).

Sentencing

16. The Defendant has a clear disciplinary record.
17. In line with published policy, we shall give credit to the Defendant in sentencing for his frank admission and full 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 him must necessarily be of a lesser extent than in other cases.
18. We bear in mind that the primary 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 public confidence in the medical profession by upholding its high standards and good reputation.
19. We are told in mitigation that the Defendant's third party insurance had been previously managed by his brother who was working in a bank. After his brother's departure from the bank, the Defendant experienced much difficulty purchasing insurance for the vehicle concerned. Owing to his busy practice, he put this matter aside and subsequently forgot that he had not dealt with it.
20. We are further told in mitigation that the Defendant understood that his busy practice was no defence or excuse for his oversight and fully accepted that he should have been more vigilant in making sure that his third party insurance and the licence of the vehicle concerned were up to date.
21. We wish to emphasize that driving an unregistered vehicle and especially one without third party insurance are serious matters. It is aggravated in the present case by the long lapse of time in which the vehicle concerned was unregistered and without third party insurance. But for his insight into his wrongdoings, the Defendant would be facing more severe sanctions.

22. Taking into consideration the nature and gravity of this case and what we have heard and read in mitigation, we shall make a global order in respect of the amended disciplinary charges (a), (b) and (c) that a warning letter be issued to the Defendant; and our order is to be published in the Gazette.

Remark

23. The Defendant's name is included in the Specialist Register under the Specialty of General Surgery. We shall leave it to the Education and Accreditation Committee to decide on whether anything may need to be done to his specialist registration.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong