

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendants:

Dr HO Pang Nin (何澎年醫生) (M03379)	(1 st Defendant)
Dr LEUNG Tze Ming (梁止鳴醫生(先前註冊為梁子明))(M03278)	(2 nd Defendant)
Dr LO Chun Wai (勞振威醫生) (M01906)	(3 rd Defendant)

Date of hearing: 29 November 2017 (Wednesday)

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK, GBS CBE JP
(Temporary Chairman)
Dr HO Pak-leung, JP
Dr HUNG Se-fong, BBS
Mr YU Kwok-kuen, Harry
Dr MOK Pik-tim, Francis
Mr WOO King-hang

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendants: Mr Chris Howse of Messrs. Howse
Williams Bowers

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The amended charges against each of the Defendants, Dr HO Pang Nin (1st Defendant), Dr LEUNG Tze Ming (2nd Defendant) and Dr LO Chun Wai (3rd Defendant) are :

“That he, being a registered medical practitioner:

- (a) was convicted at the Eastern Magistrates’ Courts on 13 June 2011 of the following offences punishable with imprisonment, namely:
 - (i) seven counts of “failed to, in accordance with Regulations 5 and 6 of the Dangerous Drugs Regulations, enter in a register that he kept in chronological sequence in the form specified in the First Schedule true

particulars with respect to every quantity of a dangerous drug”, contrary to Regulations 5(1)(a) and 5(7) of the Dangerous Drugs Regulations, Cap. 134A, made under Dangerous Drugs Ordinance, Cap. 134, Laws of Hong Kong;

(ii) one count of “failed to keep a register in accordance with Regulations 5 and 6 of the Dangerous Drugs Regulations and failed to enter therein in chronological sequence in the form specified in the First Schedule true particulars with respect to every quantity of a dangerous drug”, contrary to Regulations 5(1)(a) and 5(7) of the Dangerous Drugs Regulations, Cap. 134A, made under Dangerous Drugs Ordinance, Cap. 134, Laws of Hong Kong; and

(b) on or around 4 January 2010, he failed to ensure that the entries in the dangerous drugs registers kept by him were made in ink or other indelible form, contrary to paragraph 10.5 and Appendix F of the Code of Professional Conduct for the Guidance of Registered Medical Practitioners. In relation to the facts alleged, he has been guilty of misconduct in a professional respect.”

Facts of the case

The 1st Defendant

2. Dr HO Pang Nin was at all material times a registered medical practitioner. His name has been included in the General Register from 1 November 1978 to present and his name has been included in the Specialist Register under the specialty of Psychiatry since 4 March 1998.

The 2nd Defendant

3. Dr LEUNG Tze Ming was at all material times a registered medical practitioner. His name has been included in the General Register from 8 August 1978 to present and his name has been included in the Specialist Register under the specialty of Psychiatry since 4 March 1998.

The 3rd Defendant

4. Dr LO Chun Wai was at all material times a registered medical practitioner. His name has been included in the General Register from 14 March 1972 to present and his name has been included in the Specialist Register under the specialty of Psychiatry since 4 March 1998.

5. The 1st, 2nd and 3rd Defendants (hereinafter collectively referred to as “the Defendants”) admit the factual particulars of paragraphs (a) and (b) of the amended charges against them.
6. Briefly stated, on 4 January 2010, pharmacists from the Department of Health (“DH”) visited the Defendants’ clinic (“the Clinic”) at Room 1003, Commercial House, 35 Queen’s Road Central, Hong Kong for dangerous drugs (“DD”) inspection. They met the 2nd Defendant who, upon being questioned, stated that the DD transaction records were kept in a computer whilst the stocks of DD were locked in the cabinets at the dispensing area of the Clinic. The 2nd Defendant also stated that the DD kept in the Clinic were jointly owned by the Defendants.
7. Upon request by the DH pharmacists, the 2nd Defendant then asked his clinic assistant to produce a folder keeping the daily printout of DD prescribed by each of the Defendants for inspection (“the Daily Printout”). The Daily Printout was found to contain the individual patient’s name, identity card number and the quantity of DD supplied to him or her. The 2nd Defendant also asked his clinic assistant to generate from a computer 2 reports, namely, “Drug-CENTRAL” and “Stock-in Drug History” to show the balance of each kind of DD kept in the Clinic and transaction records in relation to DD obtained by the Defendants respectively.
8. However, the Daily Printout as well as the 2 computer-generated reports, namely, “Drug-CENTRAL” and “Stock-in Drug History” were found to be non-compliant with the statutory format as stipulated by the First Schedule to the Dangerous Drugs Regulations, Cap. 134A (“the DD Regulations”).
9. The DH pharmacists later found 18 kinds of DD in the cabinets at the dispensing area of the Clinic. In the presence of the 2nd Defendant’s clinic assistant, the DH pharmacists checked the stock of DD against the corresponding balance stated in “Drug-CENTRAL”. However, record of 1 kind of DD, namely, Dormicum 7.5mg x 30 tablets, was found to be missing.
10. The Defendants were subsequently charged and convicted on their own pleas at the Eastern Magistrates’ Court on 13 June 2011 of the aforesaid offences and each of them was fined a total sum of \$10,000.
11. There is no dispute that the aforesaid offences are punishable with imprisonment. And the Defendants’ convictions were reported to the Council through their former solicitors by a letter dated 6 July 2011.

12. According to the record from the Magistrates' Court, the DD involved in the aforesaid offences were as follows:-

- (1) Lorans 2 mg x 9,961 tablets
- (2) Xanax 0.5 mg x 114.7 tablets
- (3) Ritalin 10 mg x 833.75 tablets
- (4) Diazepam 1 mg x 1,136.1 tablets
- (5) Diazepam 2 mg x 6,034.1 tablets
- (6) Diazepam 5 mg x 6,471.9 tablets
- (7) Frisium 10 mg x 735 tablets
- (8) Dormicum 7.5 mg x 30 tablets

Burden and Standard of Proof

13. We bear in mind that the burden of proof is always on the Legal Officer and the Defendants do not have to prove their 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.

14. There is no doubt that the allegations made against the Defendants here are serious ones. Indeed, it is always a serious matter to accuse any registered medical practitioner of misconduct in a professional respect. We need to look at all the evidence and to consider and determine the disciplinary charges against each of them separately and carefully.

Findings of the Council

15. 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.”

16. The Council is therefore entitled to take the aforesaid convictions as conclusively proven against the Defendants.

17. Accordingly, we also find all the Defendants guilty of the disciplinary offence (a) as charged.
18. As to disciplinary charge (b), the Defendants admit the factual particulars of the amended disciplinary charge against them, but it still remains for us to decide whether the Defendants were guilty of professional misconduct.
19. We acknowledge that there was a wide range of culpability within which the offence of failing to keep proper DD register could be committed. It might range from mere negligence or lack of supervision to deliberate and wilful concealment of the existence of DD.
20. It is not only good practice under the Code but indeed a legal obligation under regulation 6(d) of the DD Regulations that every entry (including correction) required to be made in the DD register should be made in ink or otherwise so as to be indelible. This legal obligation is a personal duty upon individual doctors.
21. There is however no dispute in this case that the entries in the DD registers kept in the computer were not made in indelible form.
22. Stringent control of DD is essential to avoid misuse and abuse. Failure to comply with the statutory requirements to keep proper DD Registers may jeopardize the monitoring system of DD by public officers. Being experienced psychiatrists who prescribed and dispensed DD to their patients regularly and in substantial quantities, the Defendants ought to know the importance of having proper entries in indelible form. In our view, the Defendants' conduct had fallen below the standards expected of registered medical practitioners in Hong Kong.
23. Accordingly, we also find all the Defendants guilty of disciplinary charge (b).

Sentencing

24. All the Defendants have clear disciplinary record.
25. In line with published policy, we shall give credit to the Defendants for their 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 them must necessarily be of a lesser extent than in other cases.

26. We bear in mind that the purpose of a disciplinary order is not to punish the Defendants for the 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.
27. 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 DD must diligently discharge the corresponding responsibility to keep records in the prescribed form. As a matter of fact, the DD 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.
28. In the recent years, all cases of failing to comply with the statutory requirements to keep proper DD registers 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.
29. There is nothing in the evidence to suggest that the Defendants prescribed the DD to their patients improperly. We noted from the record of the Magistrates' Courts that all information to be recorded in the DD registers could be found in the computer records, albeit the statutory format had not been followed. We also accept the Defendants' explanation that disciplinary charge (a)(ii) related to 30 tablets of Dormicum 7.5 mg, the expiry date of which was in January 1999. The Defendants had previously kept a handwritten DD register in respect of this DD but they were unable to produce it to the DH pharmacists for inspection.
30. We are told in mitigation that the Defendants have reverted back to the use of DD registers in the statutory format and all entries would now be made by hand in ink.
31. We accept that the Defendants have learnt their lessons and the chance of their repeating the same breach and/or mistake would be low.
32. Having considered the nature and gravity of this case and the mitigation advanced by the defence solicitor, we shall make in respect of each of the Defendants a global order that his 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 6 months on the condition that he 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 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. 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 6-month suspension period; and
- (g) in case of change of Practice Monitor at any time before the end of the 6-month 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.

Remark

33. Each of the Defendants is included in the Specialist Register under the Specialty of Psychiatry. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of their specialist registration.

Prof. Felice LIEH-MAK, GBS CBE JP
Temporary Chairman
The Medical Council of Hong Kong