

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr KHAW Kim Sun (許金山醫生) (Reg. No.: M10654)

Date of hearing: 6 July 2020 (Monday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr HO Pak-leung, JP
Dr QUE Tak-lun
Mr KWONG Cho-shing, Antonio, MH
Mr LAW Yu-wing

Legal Adviser: Mr Edward SHUM

Senior Government Counsel representing the Secretary: Ms Cindy LEUNG

The Defendant, who is not legally represented, is not present.

1. The charges against the Defendant, Dr KHAW Kim Sun, are:

“That he, being a registered medical practitioner:

- (a) was convicted at the High Court on 19 September 2018 of 2 counts of murder, which was an offence contrary to common law and punishable with imprisonment under section 2 of the Offences against the Persons Ordinance, Chapter 212, Laws of Hong Kong; and

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

Facts of the case

2. The Defendant’s name has been included in the General Register from 18 June 1996 to the present. His name has been included in the Specialist Register under the Specialty of Anaesthesiology since 4 March 1998.
3. Briefly stated, information had been received by the Secretary of the Medical Council (the “Secretary”) that the Defendant was convicted after trial at the High Court of Hong Kong on 19 September 2018 of 2 counts of murder.
4. Upon referral of the Preliminary Investigation Committee (“PIC”) of the Medical Council, a notice of inquiry in respect of the aforesaid charges (the “Notice of Inquiry”) was issued by the Secretary to the Defendant on 8 May 2020.
5. Pursuant to section 51 of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (the “Regulation”), the Notice of Inquiry was sent by the Secretary to the Defendant by registered post to his last known address at Stanley Prison. No reply from the Defendant had been received by the Medical Council so far.
6. There is no dispute that the Defendant did not report his convictions to the Medical Council within the prescribed time limit of 28 days under section 29.1 of the Code of Professional Conduct published in January 2016 (the “Code”).

Burden and Standard of Proof

7. 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.

8. It is always a serious matter to accuse a registered medical practitioner of misconduct in a professional respect. And we need to look at all evidence and to consider and determine each of the disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

9. There is no dispute that the offence of murder was and still is punishable with imprisonment. By virtue of section 21(1) of the Medical Registration Ordinance (“MRO”), Chapter 161, Laws of Hong Kong, our disciplinary powers against the Defendant are engaged.

10. 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.”

11. In this connection, we noted from the transcript of the criminal trial of the Defendant that the trial Judge had this to say when sentencing the Defendant:

“The defendant faces two counts of murder. The murder of his wife... and his daughter... He was found guilty of both counts by the jury after the trial.

The evidence shows that the defendant who was an associate professor of the Chinese University of Hong Kong and an anaesthetist took a quantity of pure carbon monoxide, a lethal gas, which is odourless and tasteless inside two yoga balls away from his laboratory after an experiment with a rabbit was conducted on 20 May 2015.

On 22 May 2015, the defendant’s wife and daughter were found unconscious inside the yellow Mini Cooper which was stopped at the bus stop outside Sai O Village.

The cause of death for both mother and daughter was carbon monoxide poisoning with a carboxyhaemoglobin level in their blood being 50 per cent and 41 per cent respectively.

Evidence shows that the carbon monoxide which killed both mother and daughter did not come from the Mini Cooper itself. There was nothing mechanically wrong with the car. A partially deflated yoga ball was found inside the boot of the Mini Cooper. The defendant admitted it was one of the yoga balls that he used to carry or convey the carbon monoxide home on 21 May 2015, the other one had leaked. And there is no direct evidence before the jury that it was the defendant who had placed the yoga ball with carbon monoxide inside the Mini Cooper which eventually killed both mother and daughter, the verdict of the jury that the defendant is guilty of both counts of murder could only mean that after considering all the circumstantial evidence and drawing inferences, they came to the only conclusion that it was the defendant who had placed the yoga ball with carbon monoxide inside the Mini Cooper with the intention to kill his wife, ended up killing his wife and his daughter... as well...

Whether the research was a sham, a cover for the defendant to get hold of carbon monoxide to kill his wife, or that the defendant only formed the idea of using carbon monoxide to kill his wife after carbon monoxide was available to him, the fact of the matter was that he had taken carbon monoxide home and had removed its stopper so that lethal carbon monoxide leaked from the yoga ball into the cabin without those inside the cabin of the car knowing, with the intention to kill his wife and killed not only her, but also his daughter.

His excuse that he was taking the carbon monoxide home to kill rats was evidently not believed by the jury. It is shocking that a highly educated, clever and successful man such as the defendant would conjure such a calculated method to get rid of his wife. Though there is no direct evidence as to the motives for getting rid of his wife, the fact that there was a third party involved, and the fact that the defendant and his wife own certain properties, half of which might, in the case of divorce, had gone to his wife, might have some bearing on his motive.

This is premeditated and planned murder of his wife...

In law, there is only one sentence I can impose for an adult convicted of murder. That is life imprisonment..."

12. We are entitled in law to treat the aforesaid convictions as proven against the Defendant. Accordingly, we find the Defendant guilty of the disciplinary offence (a).

13. There is no dispute that the Defendant failed to report to the Medical Council his convictions within the prescribed time limit of 28 days, contrary to section 29.1 of the “Code”. Failure to report within the specified time by itself is a ground for disciplinary action.
14. Given the nature and gravity of his crime, we find it inexcusable for the Defendant not to report his convictions to the Medical Council within the prescribed time limit of 28 days. In our view, the Defendant’s conduct had fallen below the standards expected of registered medical practitioners in Hong Kong.
15. Accordingly, we also find the Defendant guilty of the disciplinary charge (b).

Sentencing

16. The Defendant has a clear disciplinary record.
17. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant for the criminal offences for a second time but to protect the public from persons who are unfit to practice medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.
18. We fully agree with the trial Judge that “[i]t is shocking that a highly educated, clever and successful man such as the defendant would conjure such a calculated method to get rid of his wife.” Murder is no doubt the most serious crime and the Defendant had brought the medical profession into disrepute.
19. It is essential in our view to maintain amongst members of the public a well-founded confidence that any registered medical practitioner whom they consult will be a person of unquestionable integrity, probity and trustworthiness. Any person who lacks any of these essential attributes can hardly be a fit and proper person to practise medicine.
20. There is no doubt in our minds that the Defendant is unfit to be a member of the medical profession.

21. Having regard to the nature and gravity of this case, we order in respect of disciplinary offence (a) that the name of the Defendant be removed from the General Register indefinitely. We also order that the removal order shall take immediate effect upon publication in the Gazette. We further order in respect of disciplinary charge (b) that a warning letter be issued to the Defendant.

Remark

22. Pursuant to section 19B(1) of the MRO, upon our order to remove the Defendant's name from the General Register, the Registrar shall, at the same time when she removes his name from the General Register, also order the removal of his name from the Specialist Register. Accordingly, there is no need for us to make a separate order for the removal of the Defendant's name from the Specialist Register.

Prof. LAU Wan-ye, Joseph, SBS
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong