

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 SHAM Man Wai (岑文慰醫生) (Reg. No.: M04748)

Date of hearing: 18 October 2017 (Wednesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS (Chairman)  
Dr HO Hung-kwong, Duncan  
Dr TSE Hung-hing, JP  
Ms CHOY Hok-man, Constance  
Dr YAM Kwong-yui  
Mr WONG Hin-wing

Legal Adviser: Mr Edward SHUM

Defence Counsel representing the Defendant: Mr Michael LIU and Ms Stephanie HUNG as instructed by Messrs. Rowdget W. YOUNG & Co.

Government Counsel representing the Secretary: Ms Carmen SIU

1. The charges against the Defendant, Dr SHAM Man Wai, are:

“That he, being a registered medical practitioner:

- (a) was convicted at the Fanling Magistrates’ Courts on 17 June 2013 of fraud, which is an offence punishable with imprisonment, contrary to section 16A(1) of the Theft Ordinance, Chapter 210, Laws of Hong Kong; and
- (b) was convicted at the Fanling Magistrates’ Courts on 17 June 2013 of obtaining access to a computer with dishonest intent, which is an offence punishable with imprisonment, contrary to section 161(1)(b) of the Crimes Ordinance, Chapter 200, Laws of Hong Kong.”

## **Facts of the case**

2. The Defendant was at all material times a registered medical practitioner. His name has been included in the General Register from 19 July 1982 to present and his name has never been included in the Specialist Register.
3. On 17 June 2013, the Defendant was convicted after trial by a Magistrate sitting at the Fanling Magistrates' Courts of the following offences:-
  - (a) 9 counts of fraud, which is an offence punishable with imprisonment, contrary to section 16A(1) of the Theft Ordinance, Chapter 210, Laws of Hong Kong. The Defendant was sentenced to 4 months of imprisonment for each count to be served concurrently;
  - (b) 12 counts of obtaining access to a computer with dishonest intent, which is an offence punishable with imprisonment, contrary to section 161(1)(b) of the Crimes Ordinance, Chapter 200, Laws of Hong Kong. The Defendant was sentenced to 6 weeks of imprisonment for each count to be served concurrently; and
  - (c) one count of theft, which is an offence punishable with imprisonment, contrary to section 9 of the Thefts Ordinance, Chapter 210, Laws of Hong Kong. The Defendant was sentenced to 6 months imprisonment.
4. The Defendant subsequently appealed against the said convictions. On 15 April 2014, his appeal to the Court of First Instance was partially allowed by the Honourable Madam Justice Toh. Of the convictions for 9 counts of "Fraud", 2 counts were quashed. Of the convictions for 12 counts of "Obtaining access to a computer with dishonest intent", 10 counts were quashed. So was the conviction of "Theft".
5. Convictions for the rest of the charges were upheld by the Court on appeal. According to the Statement of Agreed Facts signed by the Legal Officer and the Legal Representative for the Defendant, particulars of those charges are as follows:-

### **Charge 1**

Sham Man Wai, on or about the 4<sup>th</sup> day of November 2003, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Atenolol, Calamine, Chlortetra Cycline HCL, Chlorpheni Ramine Maleate, Drixoral S.R. and Famotidine, valued at \$49.58 in total) stated in a prescription form were to be used by [REDACTED], and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

#### Charge 2

Sham Man Wai, on or about the 20<sup>th</sup> day of October 2005, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Allopurinol, Cocillana Compound, Diclofenac Sodium, Famotidine, Fluvastatin Sodium and Nifedipine, valued at \$182.70 in total) stated in a prescription form were to be used by [REDACTED], and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

#### Charge 3

Sham Man Wai, on or about the 3<sup>rd</sup> day of October 2006, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Ammonia and Ipecacuanha, Budesonide Aqueous, Chlorphenira Mine Maleate, Cocillana Compound, Domperidone, Famotidine, Gastrocaine and Salbutamol Sulphate, valued at \$396.91 in total) stated in a prescription form were to be used by [REDACTED], and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

#### Charge 4

Sham Man Wai, on or about the 10<sup>th</sup> day of August 2007, in Hong Kong, by deceit, namely by falsely representing that the said Sham Man Wai had carried out medical consultation for [REDACTED] and the medicines (namely, Atenolol, Betamethasone (Valerate), Cocillana Compound, Famotidine and Nifedipine, valued at \$49.45 in total) stated in a prescription form were to be used by the said [REDACTED], and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of

prejudice to the Hospital Authority.

Charge 5

Sham Man Wai, on or about the 22<sup>nd</sup> day of January 2008, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Ammonia and Ipecacuanha, Chlorpheniramine Maleate, Cocillana Compound and Dequalinium Chloride, valued at \$96.43 in total) stated in a prescription form were to be used by [REDACTED], and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

Charge 6

Sham Man Wai, on or about the 9<sup>th</sup> day of February 2010, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Ammonia and Liquorice, Calamine, Famotidine, Gliclazide, Metformin HCL, Prochlorperazine Maleate, Rosiglitazone Maleate and Simvastatin, valued at \$1,264.61 in total) stated in a prescription form were to be used by [REDACTED], and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

Charge 8

Sham Man Wai, on or about the 22<sup>nd</sup> day of June 2010, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Amlodipine Besylate, Gliclazide, Indapamide, Metformin HCL, Rosiglitazone Maleate and Simvastatin, valued at \$1,237.98 in total) stated in a prescription form were to be used by [REDACTED], and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

Charge 10

Sham Man Wai, on the 4<sup>th</sup> day of October 2006, in Hong Kong, obtained access to a computer, namely the Clinical Management System of the Hospital Authority, with a dishonest intent to deceive the Hospital Authority that [REDACTED] made a medical appointment.

### Charge 11

Sham Man Wai, on the 22<sup>nd</sup> day of January 2008, in Hong Kong, obtained access to a computer, namely the Clinical Management System of the Hospital Authority, with a dishonest intent to deceive the Hospital Authority that [REDACTED] made a medical appointment.

6. A copy of the Judgment of the Court on appeal was adduced by the Legal Officer as part of her case against the Defendant.
7. Briefly stated, the Defendant, who was one of the senior medical officers working at Fanling Family Medicine Centre, was found to have kept inside his consultation room a carton box containing medicines, which ought to have been dispensed to patients. Subsequent investigation by his superior officers then revealed further evidence that eventually led to the successful prosecution of the aforesaid charges.

### **Findings of the Council**

8. 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.”
9. The Council is therefore entitled to take the aforesaid convictions as conclusively proven against the Defendant.
10. Accordingly, we also find the Defendant guilty of the disciplinary offences as charged.

### **Sentencing**

11. The Defendant has a clear disciplinary record.
12. 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 conviction, the credit to be given to him must necessarily be of a lesser

extent than in other cases.

13. 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 its high standards and good reputation.
14. It is essential in our view to maintain amongst members of the public a well-founded confidence that any registered medical practitioner whom they consulted will be a person of unquestionable integrity, probity and trustworthiness. Any person who lacks these essential attributes can hardly be a fit and proper person to practise medicine.
15. It is clearly stated in the Code of Professional Conduct that a particularly serious view will likely be taken in respect of offences involving dishonesty. This is a case involving fraud and obtaining access to the Hospital Authority's computer with dishonest intent. We remind ourselves that we should not take into consideration any of the convictions that were set aside by the Court on appeal.
16. We accept that there is no evidence to show that the medicines involved in Charges 1 to 6 and 8 were obtained by the Defendant for the purpose of resale. The Defendant told us through his counsel that he kept those medicines on behalf of his patients so that they would not have to wait for so long for dispensation. Counsel for the Defendant likened it to "running a mini dispensary". This also explained why the Defendant needed to replenish the medicines from time to time.
17. Whatever the intention of the Defendant might be, it remains a clear case of dishonesty and breach of trust. We are particularly concerned to hear that the Defendant also gave out unused medicines returned from patients to other patients. In our view, the lack of quality assurance of such unused medicines must not be under-estimated.
18. Whilst we accept that the Defendant committed Charges 10 and 11 not for personal gain but in effect this was tantamount to helping his acquaintance to jump the queue for public medical service. However, we accept that the Defendant has learnt his lesson and the chances of his committing the same or similar disciplinary offences in the future would be low.
19. Having considered the nature and gravity of this case and what we heard and read

in the mitigation, we make a global order in respect of both disciplinary offences that the Defendant's name be removed from the General Register for 3 months. We also order that the removal order be suspended for a period of 12 months.

Prof. LAU Wan-yee, Joseph, SBS  
Chairman  
The Medical Council of Hong Kong