

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

1st Defendant: Dr SHAM Wing Hang (岑穎恒醫生) (Reg. No.: M14323)

2nd Defendant: Dr WONG Yat Ching (黃一清醫生) (Reg. No.: M02975)

Date of hearing: 7 September 2020 (Monday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr PONG Chiu-fai, Jeffrey
Dr YAM Kwong-yui
Mr LAM Chi-yau
Mr NG Ting-shan

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendants: Mr William CHAN of
Messrs. Mayer Brown

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The amended charge against the 1st Defendant, Dr SHAM Wing Hang, is:

“That in or about 2011 to 2015, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] (“the Patient”) in that he prescribed Midazolam (brand name: Dormicum) to the Patient in higher than recommended dose and/or for extended period of time without adequate assessment, proper justification and/or clinical indication.

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

2. The amended charge against the 2nd Defendant, Dr WONG Yat Ching, is:

“That in or about 2011 to 2015, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] (“the Patient”) in that he prescribed Midazolam (brand name: Dormicum) to the Patient in higher than recommended dose and/or for extended period of time without adequate assessment, proper justification and/or clinical indication.

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

Facts of the case

3. The Patient was sentenced by the District Court for burglary on 13 June 2016. During trial, the Court was told that the Patient had used excessive amount of a drug called “Blue Gremlin”, which was prescribed by two registered medical practitioners. The Court was concerned whether there was medical negligence regarding excessive prescription of “Blue Gremlin”, and directed the police to refer the matter to the Medical Council. On 19 July 2016, the police lodged a complaint to the Medical Council. The two registered medical practitioners being complained against were the 1st and 2nd Defendants.
4. The 1st Defendant’s name has been included in the General Register from 2 July 2004 to the present. His name has never been included in the Specialist Register.
5. The Patient consulted the 1st Defendant on 10 December 2011 for chronic refractory insomnia. The Patient told the 1st Defendant that he had previously abused Heroin but was on Methadone detoxification (20 mg per day). The Patient also reported that he had seen other doctors for insomnia before and had taken Midazolam (brand name: Dormicum) 15 mg, two to four tablets per day. The 1st Defendant diagnosed the Patient with insomnia and prescribed him with Midazolam 15 mg (two tablets per day, before sleep) for 30 days.
6. Apart from the above consultation, from 2012 to 2015, the Patient consulted the 1st Defendant for chronic refractory insomnia on the following dates:
- 2012: 20 January, 20 September, 8 November and 19 December
2013: 17 March, 15 April, 10 May, 14 June, 18 July, 15 August, 17 September, 25 October, 22 November, 25 December

2014: 3 April, 12 June, 11 July
2015: 30 January, 28 March, 25 April, 5 June, 8 July, 23 September,
26 October

7. For each of the consultations in 2012, the 1st Defendant prescribed and dispensed the Patient with Midazolam 15 mg (two tablets per day, before sleep) for 30 days. For each of the consultations in 2013, 2014 and 2015, pursuant to the Patient's request, the 1st Defendant gave the Patient a written prescription for Midazolam 15 mg (two tablets per day, before sleep) for 30 days to be dispensed by a registered pharmacy.
8. At the inquiry, the 1st Defendant admitted that, from 2011 to 2015, he prescribed Midazolam (brand name: Dormicum) to the Patient in higher than recommended dose and/or for extended period of time without adequate assessment, proper justification and/or clinical indication.
9. The 2nd Defendant's name was at all material times and is still included in the General Register. His name has never been included in the Specialist Register.
10. The Patient consulted the 2nd Defendant on 11 April 2011 for chronic refractory insomnia. The Patient told the 2nd Defendant that he had been taking Midazolam (brand name: Dormicum) for 10 years with three tablets per night, and that he was a morphine addict in the past but had weaned off for one year. The Patient claimed that he was not taking Methadone or other psychotropic drugs at the time. The 2nd Defendant diagnosed the Patient with insomnia and prescribed him with Midazolam 15 mg (one tablet per day, before sleep) for 30 days.
11. Apart from the above consultation, from 2011 to 2015, the Patient consulted the 2nd Defendant for chronic refractory insomnia on the following dates:

2011: 15 May, 27 June, 5 August, 10 October, 29 December
2012: 1 February, 29 April, 4 July, 5 August, 4 November, 13 December
2013: 6 January, 25 March, 19 April, 17 June, 19 July, 19 August, 24 October,
20 November
2014: 3 April, 17 June, 19 September, 24 November
2015: 6 January, 3 April, 20 June, 16 September, 9 November

12. For each of the above consultations, the 2nd Defendant prescribed the Patient with Midazolam 15 mg (one tablet per day, before sleep) for 30 days, except for the consultations on 1 February 2012, 6 January 2013, 19 August 2013, 20 November 2013, 3 April 2014, 17 June 2014 and 19 September 2014 and all the consultations in 2015, during which Midazolam 15 mg (one tablet per day, before sleep) was prescribed for 60 days.
13. At the inquiry, the 2nd Defendant admitted that, from 2011 to 2015, he prescribed Midazolam (brand name: Dormicum) to the Patient in higher than recommended dose and/or for extended period of time without adequate assessment, proper justification and/or clinical indication.

Burden and Standard of Proof

14. We bear in mind that the burden of proof is always on the Legal Officer and the 1st and/or 2nd 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.
15. There is no doubt that the allegation against the 1st and/or 2nd Defendants 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 disciplinary charge against them separately and carefully.

Findings of the Inquiry Panel

16. According to the expert reports prepared by Dr Chung Ka Fai, the Secretary's Expert ("the Expert"), there is no indication for the use of Dormicum for the treatment of chronic insomnia. Oral Dormicum is not listed under "Hypnotics and anxiolytics" in British National Formulary (2015 version). Unlike other benzodiazepines, oral Dormicum has a high risk of abuse and dependence due to its short half-life (mean = 3 hours) and rapid onset of action (mean = 1.5 hours). In countries where oral Dormicum is still available, e.g. Europe, the drug should generally be prescribed for a maximum of two weeks. There may be indications for long-term prescription of benzodiazepines that are of low risk of abuse, but there are no justifications for

the long-term prescription of Dormicum for patients with a current or past history of substance abuse and dependence.

17. We entirely agree with what the Expert said. Further, the Code of Professional Conduct (2009 version) had made provisions under Appendix E (Guidelines on Proper Prescription and Dispensing of Dangerous Drugs) thereof which required doctors to acquaint themselves with when prescribing or supplying drugs of addiction or dependence. In our view, both the 1st and 2nd Defendants had fallen short of complying with many of the guidelines under the said Appendix E. Both the 1st and 2nd Defendants knew that the Patient was an opiate addict. They should have been very cautious when prescribing Midazolam (brand name: Dormicum), a drug of addiction or dependence, to the Patient, particularly there was a high likelihood that such type of drugs might also be sought from other doctors or sources at the same time, which happened in this case. However, both the 1st and 2nd Defendants still prescribed the Patient with Midazolam (brand name: Dormicum) for a period of four years, which was a very long period of time. There was no indication or justification in both cases for such a long prescription. Both of them had not conducted adequate assessment for the management of the Patient.
18. We are satisfied that both the 1st and 2nd Defendants' conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find the 1st and 2nd Defendants guilty of misconduct in a professional respect as charged.

Sentencing

1st Defendant (Dr SHAM Wing Hang)

19. The 1st Defendant has a clear disciplinary record.
20. In line with our published policy, we shall give the 1st Defendant credit for his frank admission and full cooperation throughout the inquiry.
21. We bear in mind that the primary purpose of a disciplinary order is not to punish the 1st 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.

22. We are told in mitigation that the 1st Defendant accepted that there was significant room for improvement in terms of his management of the Patient. He admitted that he should have stood firm and refused to repeatedly prescribe the Patient with Midazolam (Dormicum) and the Patient should try other hypnotics.
23. We are also told that the 1st Defendant had completed a Postgraduate Diploma in Mental Health offered by the Chinese University of Hong Kong and had obtained numerous CME points not only on psychiatric cases, but also on a broad range of problems. We accept that the 1st Defendant was remorseful, has taken remedial measures, and has insight into his problem. The risk of re-offending is therefore low.
24. Having considered the serious nature and gravity of the amended disciplinary charge for which the 1st Defendant was convicted and what we have heard and read in mitigation, we order that the 1st Defendant be removed from the General Register for a period of 2 months. We further order that the removal order be suspended for a period of 24 months, subject to the following conditions:
- (a) The 1st Defendant shall complete continuing medical education courses in psychiatric management, drug prescription and patient management to be pre-approved by the Chairman of the Medical Council within the first 12 months of the suspension period equivalent to 10 CME points. The 1st Defendant should submit evidence of certification of the CME points by a CME Accreditor approved by the Council within one month after the expiry of the first 12 months of the suspension period; and
 - (b) the 1st Defendant shall complete during the 24-month suspension period satisfactory peer audit by a Practice Monitor to be appointed by the Council with the following terms:
 - (i) the Practice Monitor shall conduct random audit of the 1st Defendant's practice with particular regard to the prescription and dispense of dangerous drugs, and the keeping of the Register of Dangerous Drugs;
 - (ii) the peer audit should be conducted without prior notice to the 1st Defendant;

- (iii) the peer audit should be conducted at least once every 6 months during the 24-month suspension period;
- (iv) during the peer audit, the Practice Monitor should be given unrestricted access to all parts of the 1st Defendant's clinic and the relevant records which in the Practice Monitor's opinion is necessary for proper discharge of his duty;
- (v) 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;
- (vi) in the event that the 1st Defendant does not engage in active practice at any time during the 24-month suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until the completion of 24-month suspension period; and
- (vii) in case of change of Practice Monitor at any time before the end of the 24-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.

2nd Defendant (Dr WONG Yat Ching)

- 25. The 2nd Defendant has one previous disciplinary conviction on 22 October 2019 relating to the criminal conviction before the Kowloon City Magistrates' Courts on 8 June 2017 of nine counts of the offence of failing to keep a Register of Dangerous Drugs in specified form. The 2nd Defendant was ordered to be removed from the General Register for a period of 2 months, suspended for a period of 12 months subject to a peer audit.
- 26. The misconduct in the present case was not committed within the suspension period of the 2-month removal order. We shall therefore not activate the suspended removal order. We also consider that the previous disciplinary conviction and today's conviction are two separate matters.

27. In line with our published policy, we shall give the 2nd Defendant credit for his frank admission and full cooperation throughout the inquiry today.
28. We bear in mind that the primary purpose of a disciplinary order is not to punish the 2nd 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.
29. When the 2nd Defendant made his submissions to the Preliminary Investigation Committee in 2018, all along he did not accept that he had done anything wrong. He also did not accept the opinion of the first expert report dated 8 February 2017 prepared by the Expert. The 2nd Defendant has done nothing much in relation to remedial measures taken. He has also not taken any CME courses relating to psychiatric disorder. We have serious doubt if the 2nd Defendant is remorseful. We do not believe the 2nd Defendant has insight into his problems.
30. Having considered the serious nature and gravity of the amended disciplinary charge for which the 2nd Defendant was convicted and what we have heard and read in mitigation, we consider that a removal order from the General Register for a period of 3 months as a starting point is justified. We however will give the 2nd Defendant credit for his admission at today's inquiry. We therefore order that the name of the 2nd Defendant be removed from the General Register for a period of 2 months.
31. We have also considered whether to order a suspended sentence for the 2nd Defendant. However, given our reasons above, a suspended sentence is not appropriate.

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