# 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 WONG Chi Ho Jimmy (王賜豪醫生) (Reg. No.: M08001)

Date of hearing: 5 December 2017 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS (Chairman)
Dr Hon CHAN Pierre
Dr CHENG Chi-man
Dr TSE Hung-hing, JP
Ms LAU Wai-yee, Monita
Dr LI Mun-pik, Teresa

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Dr Gerard McCoy, SC, as instructed by Messrs. Mayer Brown JSM

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The amended charges against the Defendant, Dr WONG Chi Ho Jimmy, are :

"That he, being a registered medical practitioner:

(a) was convicted at the Eastern Magistrates' Courts on 12 October 2009 of the offence of failing to provide specimen of breath for a screening breath test by a person who is driving a motor vehicle on a road, which is an offence punishable with imprisonment, contrary to sections 39B(1)(a) and (6) of the Road Traffic Ordinance, Chapter 374, 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 conviction mentioned in paragraph (a) above within 28 days of the conviction, contrary to section 29.1 of the Code of Professional Conduct published in January 2009."

**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 22 January 1991 to present and his name has been included in the Specialist Register under the specialty of Otorhinolaryngology since 3 March 1999.

3. There is no dispute that the Defendant was found guilty after trial of the offence of "failing to provide specimen of breath for a screening breath test by a person who is driving a motor vehicle on a road", contrary to sections 39B(1)(a) and (6) of the Road Traffic Ordinance, Cap. 374.

4. There is no dispute that the aforesaid offence is punishable with imprisonment.

5. Briefly stated, at around 03:05 hours on 5 May 2009, the Defendant was driving his car along Gloucester Road eastbound when he was stopped by uniform police officers at a road block. The Defendant was asked by a police officer, who subsequently arrested him for the aforesaid offence, ("the Arresting Officer") to undergo a random screening breath test. The Arresting Officer also told the Defendant that he had to take a deep breath, hold it and blow into the mouthpiece of the pre-screening device for about 4 to 6 seconds until he was told to stop.

6. According to the verdict of the trial Magistrate, when the screening breath test began, the Arresting Officer found that the Defendant was not making genuine effort to blow into the mouthpiece of the pre-screening device. In the result, there was no specimen of breath that could be detected. The Arresting Officer then demonstrated to the Defendant the proper way of blowing into the pre-screening device. However, the Defendant still made no genuine effort to blow into the mouthpiece of the pre-screening device. In the result, there was no specimen of breath that could be detected in either the 2nd or 3rd attempts.

7. When being questioned by the Arresting Officer, the Defendant admitted that he had drunk 2 glasses of white wine several hours before. The Arresting Officer gave the Defendant a final chance to provide a specimen of breath by blowing into the pre-screening device. However, the Defendant still made no genuine effort to blow into the mouthpiece of the pre-screening device. In the result, there was no specimen of breath that could be detected in the 4th attempt.

8. Then the Defendant was taken to a police vehicle with a view to undergoing a screening breath test by using another screening device.

9. Having filled out Part 1 and Part 2 of the Police Screening Test Form ("Pol. 973"), the Arresting Officer issued a verbal warning to the Defendant that he was required to provide under section 39B of the Road Traffic Ordinance a specimen of breath for a screening breath test and he might be prosecuted if he failed to do so. However, the Defendant made no response and merely stared at the first page of Pol. 973.

10. About 2 minutes later, the Defendant suddenly asked the Arresting Officer whether he could be exempted from the screening breath test if he got uncomfortable chest. The Arresting Officer replied that it was up to the medical officer in public hospital to decide whether it was suitable for him to undergo screening breath test or blood or urine test. The Arresting Officer then asked the Defendant whether he needed to call for an ambulance but the Defendant replied that there was no need.

11. Then the Arresting Officer explained to the Defendant how to undergo the screening breath test by blowing into the screening device. However, the Defendant made no response and continued to stare at Pol. 973. It was only after repeated verbal warnings by the Arresting Officer to the effect that sentence for failure to provide a specimen of breath for a screening breath test would be comparable to "drink driving" that the Defendant agreed to undergo the screening breath test. And yet, the Defendant still made no attempt to blow when being presented with the screening device. Eventually, the Defendant was arrested and charged with the aforesaid offence.

12. In convicting the Defendant, the trial Magistrate accepted the testimony of the Arresting Officer and held that the Defendant deliberately avoided undergoing the screening breath test without any reasonable excuse, medical or otherwise. And in respect of the aforesaid offence, the Defendant was fined $8,000 and disqualified from holding a driving licence for 6 months. Also, the Defendant was ordered by the trial Magistrate to attend and complete a driving improvement course at his own cost within 3 months.

13. There is no dispute that the Defendant did not report his conviction of the aforesaid offence to the Council within 28 days of the conviction contrary to paragraph 29.1 of the Code of Professional Conduct (2009 ed.) ("the Code").

**Burden and Standard of Proof**

14. 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.

15. There is no doubt that the allegations made against the Defendant 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 him separately and carefully.

**Findings of the Council**

16. 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."

17. The Council is therefore entitled to take the aforesaid conviction as conclusively proven against the Defendant.

18. Accordingly, we also find the Defendant guilty of the amended disciplinary offence (a) as charged.

19. As to amended disciplinary charge (b), it is clearly stated in paragraph 29.1 of the Code that a doctor is required to report his conviction of an offence punishable by imprisonment within 28 days from the conviction. Failure to report within the specified time will in itself be ground for disciplinary action; and in case of doubt the matter should be reported.

20. In his submission to the Preliminary Investigation Committee ("the PIC"), the Defendant emphasized that he had no intention to conceal his conviction of the aforesaid offence. Instead, the Defendant duly and honestly reported the aforesaid conviction in his application for annual practising certificate for the year 2010 dated 5 January 2010. Moreover, the Defendant tried to mitigate his breach of the Code on the ground that he had experienced much stress, turmoil and adverse publicity as a result of the aforesaid conviction; and also he was much troubled by his family and personal matters.

21. Be that as it may, we do not find any of his explanation to be reasonable excuse(s) for the Defendant not to report his conviction of the aforesaid offence within 28 days of the conviction. Given the nature and gravity of the aforesaid offence, we are of the view that the Defendant's failure to comply with his duty to report under paragraph 29.1 of the Code constituted a conduct falling short of the standard expected amongst registered medical practitioners in Hong Kong. Therefore, we also find the Defendant guilty of the amended disciplinary charge (b).

**Sentencing**

22. The Defendant has a clear disciplinary record.

23. In line with published policy, we shall give credit to the Defendant 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.

24. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant a second time for the aforesaid offence 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.

25. In this case, there was overwhelming evidence that the Defendant failed to provide a specimen of breath for a screening breath test. Indeed, the Defendant was found by the trial Magistrate to have deliberately avoided undergoing the screening breath test. In sentencing the Defendant, the trial Magistrate also emphasized that the culpability of his failure to provide a specimen of breath for a screening breath test was equivalent to that of "drink driving". Driving a motor

vehicle whilst under the influence of alcohol is a serious offence. In our view, the Defendant, being a registered medical practitioner, ought to know better than any lay person the effect of alcohol on driving.

26. However, we accept that the Defendant has learnt a hard lesson from the aforesaid conviction and we believe that the risk of his committing the same or similar offence in the future is low.

27. Having regard to the nature and gravity of the disciplinary offence and charge in this case and what we have heard and read in mitigation, we order that:-

(1) in respect of disciplinary offence (a), the Defendant's name be removed from the General Register for 1 month and the operation of the removal order be suspended for 12 months; and

(2) in respect of disciplinary charge (b), a warning letter be issued to the Defendant.

**Remark**

28. The Defendant's name is included in the Specialist Register under the Specialty of Otorhinolaryngology. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration.

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