

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr YANG De Zhang (楊德彰醫生) (Reg. No.: M11696)
(formerly registered as YEUNG Man Shun 先前註冊為楊文信)

Date of hearing: 27 August 2021 (Friday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr LEUNG Chi-chiu
Dr CHENG Chi-kin, Ashley
Mrs BIRCH LEE Suk-ye, Sandra, GBS, JP
Ms LAU Sze-wan, Serena, JP

Legal Adviser: Mr Edward SHUM

Defence Counsel representing the Defendant: Mr Stanley LAU instructed by
Messrs. Cheung & Yeung, Solicitors

Senior Government Counsel (Acting) representing the Secretary: Mr Louie CHAN

1. The amended charges against the Defendant, Dr YANG De Zhang, are:

“That he, being a registered medical practitioner,

- (a) *was convicted at the Kwun Tong Magistrates’ Courts on 22 May 2020 of the offence of possession for sale or for purpose of trade or manufacture goods to which a forged trade mark was applied, which is an offence punishable with imprisonment, contrary to section 9(2) as read with section 18(1) and section 20 of the Trade Descriptions Ordinance, Chapter 362, Laws of Hong Kong;*

- (b) *failed to maintain adequate and contemporaneous medical records of his patients who received Human Papillomavirus (“HPV”) vaccination in or about 2019; and/or*
- (c) *delegated medical duties, including but not limited to medical records keeping, to non-qualified persons in or about 2019.*

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

Facts of the case

2. The name of the Defendant was at all material times and still is included in the General Register. His name has never been included in the Specialist Register.
3. Through his solicitors, the Defendant informed the Secretary of the Medical Council (the “Secretary”) by letter dated 16 June 2020 that he was convicted on his own plea at the Kwun Tong Magistrates’ Courts on 22 May 2020 of the offence of “*possession for sale or for any purpose of trade or manufacture goods to which a forged trade mark was applied*” contrary to section 9(2) as read with section 18(1) and section 20 of the Trade Descriptions Ordinance, Cap. 362, Laws of Hong Kong.
4. As a result of the said conviction, the Defendant was sentenced to imprisonment for 4 months on 5 June 2020.
5. Arising out of the same incident, the Secretary was subsequently informed by the Department of Health vide its memo dated 29 June 2020 that information collected during the joint investigation with the Customs & Excise Department “*suggested that [the Defendant] has not maintained medical record in any form, e.g. consultation notes, prescription order, administration records for offering HPV vaccination to clients... Besides, he might have improper delegation of medical duties, e.g. medical record keeping, to non-qualified persons*”.
6. Through his solicitors, the Defendant admitted in his submission to the Preliminary Investigation Committee of the Council dated 20 November 2020 that “*... those clients... were from the mainland and solely for the purpose of having the vaccination*” and he “*... honestly believed that the Records...*” that he kept “*would be sufficient in the circumstance*”.

7. According to the Defendant, records of patients who received HPV vaccination (“HPV Clients”) were made in the following manner:-

- “a. Vaccination records were kept in the form of printed tables incorporating items of date of payments made; patient code; patient name; permit code; appointment code; payment and date of 1st, 2nd and 3rd vaccination;*
- b. Vaccination cards were distributed to HPV Clients for their keeping containing the patient’s name, vaccination dates, a label with lot number and expiry date of vaccine was given for record; and*
- c. Receipts were issued to HPV Clients with transaction code; date; doctor; patient code; patient name; prescription; and amount being paid.”*

8. Nevertheless, the Defendant admitted the factual particulars of the disciplinary charge (b) against him.

Burden and Standard of Proof

9. We bear in mind that the burden of proof is always on the Secretary 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.

10. There is no doubt that the allegations made against the Defendant here are serious ones. 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 charges against him carefully and separately.

Findings of the Inquiry Panel

11. At the beginning of this inquiry, the Legal Officer informed us that the Secretary would offer no evidence against the Defendant in respect of disciplinary charge (c). Since the burden of proof is always on the Secretary, we must find the Defendant not guilty of disciplinary charge (c).
12. It is not disputed that the Defendant was convicted on his own plea of the offence of “*Possession for sale or for any purpose of trade or manufacture goods to which a forged trade mark was applied*” contrary to section 9(2) as read with section 18(1) and section 20 of the Trade Descriptions Ordinance, Cap. 362, Laws of Hong Kong”, which was and still is an offence punishable with imprisonment. Accordingly, our disciplinary powers under section 21(1)(a) of the Medical Registration Ordinance, Cap. 161 (“MRO”) are engaged.
13. 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.”
14. We are therefore entitled to take the said conviction of the Defendant as conclusively proven against him. Accordingly, we find the Defendant guilty of disciplinary charge (a).
15. Although the Defendant admitted the factual particulars of the disciplinary charge (b) against him, it remains for us to consider and determine on the evidence whether his conduct has fallen below the standards expected of registered medical practitioners in Hong Kong.
16. It is clearly stated in section 1.1 of the Code of Professional Conduct (2016 edition) (the “Code”) that:-

“ ...

1.1.2 A medical record documents the basis for the clinical management of a patient. It reflects on the quality of care and is necessary for continuity of care...

1.1.3 All doctors have the responsibility to maintain systematic, true, adequate, clear and contemporaneous medical records...”

17. In our view, the records kept by the Defendant in the present case were far from being adequate and contemporaneous records. Essential information like the age and medical history (in particular, any drug allergy) of the HPV Clients were missing.
18. In failing to maintain adequate and contemporaneous medical records of his HPV Clients, the Defendant has in our view by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we also find him guilty of disciplinary charge (b).

Sentencing

19. The Defendant’s name was removed from the General Register on 2 July 2008 for his failure to renew his practicing certificate for the year 2008 for over 6 months. He applied for restoration of his name to the General Register on 8 July 2008 but complaints had been received alleging him of misconduct in a professional respect while he was practicing medicine in Hong Kong. In the course of his application for restoration to the General Register, the Council had taken into consideration the following outstanding complaints against him, namely that:

“He, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the distribution of a promotional leaflet relating to his practice in association with Brightway Medical Centre (皓朗醫療中心) at the following locations and on the following dates:

- (a) *a commercial centre at the Butterfly Estate, Tuen Mun in or about July 2005;*
- (b) *the entrance of the Melody Garden Estate in Wu Chui Road, Tuen Mun on 1 September 2005; and*
- (c) *the entrance of the Melody Garden Estate in Wu Chui Road, Tuen Mun on 5 October 2005;”*

“In or about July 2005 at a location near the Tuen Mun Pier he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the distribution of a promotional leaflet relating to his practice in association with 皓朗醫療中心.”

20. The Council was satisfied on the available evidence that the outstanding complaints against the Defendant had been substantiated. Having considered all the evidence in the round, the Council decided to allow his application for restoration to the General Register. His name was then included into the General Register on 14 November 2008. The Council also warned the Defendant that the finding in the restoration hearing would be entered in his disciplinary record and be taken into account if he is found guilty of further disciplinary offences.
21. The Defendant also has previous disciplinary records relating to impermissible practice promotion and criminal conviction for failure to keep proper dangerous drug registers. And the name of the Defendant was ordered after due inquiry on 10 December 2019 to be removed from the General Register for a period of 3 months with suspension for 18 months.
22. We accept that the underlying wrongdoings to which disciplinary charges (a) and (b) related happened before the suspended removal order was made on 10 December 2019. Accordingly, we shall not activate the suspended removal order.
23. In accordance with our published policy, we shall give the Defendant credit in sentencing for his frank admission and full cooperation throughout these disciplinary proceedings. 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 fully agree with the trial magistrate that possession for sale of counterfeit medicines is a serious crime. This is particularly true when the crime was committed by a registered medical practitioner.
25. We acknowledge that there was no evidence before the trial magistrate to show that the Defendant had deliberately deceived the HPV Clients. We also accept that both genuine and counterfeit HPV injections were found on the premises.
26. But then again, the real point is that the Defendant ought not to have purchased the HPV injections from a salesman without verifying their authenticity with the official supplier.
27. Registered medical practitioners in Hong Kong have the privilege of dispensing medicines to their patients. Coupled with this privilege is the personal responsibility to take all reasonable care and exercise all due diligence in ensuring that none of the dispensed medicines would be counterfeits.
28. Although there is no evidence of actual physical harm, the false sense of security resulting from taking the counterfeit HPV injections should not be underestimated.
29. The manner in which medical records were kept also demonstrated in our view that the Defendant paid little attention to the physical well-being of the HPV Clients.
30. Taking into consideration the nature and gravity of this case and what we have heard and read in mitigation, we order in respect of disciplinary charge (a) that the name of the Defendant be removed from the General Register for a period of 6 months. We further order in respect of disciplinary charge (b) that the name of the Defendant be removed from the General Register for a period of 1 month. The said removal orders shall run concurrently, making a total of 6 months.
31. We have seriously considered whether the said removal orders should be suspended. However, we find it inappropriate to do so for the reasons mentioned above.

Prof. LAU Wan-yee, Joseph, SBS
Chairperson of the Inquiry Panel
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