

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr YUNG Kin Sing (Reg. No.: M03560)

Date of hearing: 27 September 2019 (Friday)

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK, GBS, CBE, JP
(Chairperson of the Inquiry Panel)
Dr. CHEUNG Chin-pang
Dr. WONG Yee-him, John
Mr CHAN Wing-kai
Mr HUI Cheuk-lun, Lawrence

Legal Adviser: Mr Edward SHUM

The Defendant is present and he is not legally represented.

Government Counsel representing the Secretary: Mr Raymond WONG

1. The charges against the Defendant, Dr YUNG Kin Sing, are:

“That he, being a registered medical practitioner:

- (a) was convicted at the Tuen Mun Magistrates’ Courts on 28 November 2016 of two counts of the offence of failing to keep a register of dangerous drugs in the form specified in the First Schedule, which is an offence punishable with imprisonment, contrary to Regulations 5(1)(a) and 5(7) of the Dangerous Drugs Regulations made under Dangerous Drugs Ordinance, Chapter 134, 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 name of the Defendant was at all material times and still is included in the General Register. His name had been included in the General Register from 30 March 1979 to present. His name has never been included in the Specialist Register.
3. On 5 May 2016, pharmacists from the Department of Health (“DH”) visited the Defendant’s clinic for dangerous drugs (“DD”) inspection.
4. There is no dispute that two types of DD, namely, Lorans (Lorazepam) x 802 tablets and Diazepam 2mg x 3,559 tablets were found.
5. However, the DD Registers kept by the Defendant were found to be non-compliant with the statutory requirements under the Dangerous Drugs Regulations, Cap. 134A (the “DD Regulations”) in that:-
 - (i) name(s) and address(es) of supplier(s) were missing;
 - (ii) identity card number(s) of patient(s) were missing;
 - (iii) quantity of DD received from supplier(s) were missing;
 - (iv) invoice number(s) were missing; and
 - (v) balance(s) of DD were missing.
6. The Defendant was subsequently charged with two counts of the offence of “failing to keep a register of dangerous drugs in the form specified in the First Schedule”, contrary to Regulations 5(1)(a) and 5(7) of the DD Regulations.
7. The Defendant was convicted on his own plea of the aforesaid offences at the Tuen Mun Magistrates’ Court on 28 November 2016 and was fined a total sum of \$5,000.
8. There is no dispute that the aforesaid offences are punishable with imprisonment.

9. And yet, the Defendant did not report his convictions to the Medical Council within 28 days of his convictions. Nor did the Defendant declare his convictions in his application for annual practising certificate for the year 2018 filed on 3 October 2017.
10. Meanwhile, the Defendant's convictions were drawn to the attention of the Medical Council by DH vide its letter dated 12 December 2016.

Findings of the Inquiry Panel

11. Section 21(3) of the Medical Registration Ordinance, Cap. 161, 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.”

12. We are therefore entitled to treat the aforesaid convictions as conclusively proven against the Defendant.

13. Accordingly, we also find the Defendant guilty of the disciplinary offence as stated in charge (a).

14. Turning to disciplinary charge (b), the Defendant explained in his submission to the Preliminary Investigation Committee dated 6 February 2018 that:-

“...I have contacted the Pharmacist of the Department of Health who was in charge of this case subsequent to the conviction and enquired whether it was necessary for me to take the initiative to inform the Medical Council of the case. I was given the understanding that the Department of Health will inform the Medical Council by mail separately. I was not aware that I have to do so within 28 days...”

15. It is clearly stated in section 29.1 of the Code of Professional Conduct published in January 2016 (the “Code”) that:-

“A doctor who has been convicted in or outside Hong Kong of an offence punishable with imprisonment... is required to report the matter to the Council within 28 days from the conviction... Failure to report within the specified time will in itself be ground for disciplinary action. In case of doubt the matter should be reported.”

16. It is the professional responsibility of every registered medical practitioner to acquaint himself with and to comply with provisions in the Code. We do not accept that there was any room for ambiguity in the understanding of section 29.1 of the Code.

17. Regardless of what the DH pharmacist might have told the Defendant, which we are unable to verify, it is no excuse for him not to comply with the reporting requirement under section 29.1 of the Code. In our view, the Defendant ought to have clarified with the Secretariat of the Medical Council if he was unsure about the reporting requirement. And in case of doubt, the matter should be reported to the Medical Council.

18. The Defendant did not report his convictions within the specified time limit of 28 days. Nor did he declare his convictions in his subsequent application for annual practising certificate for the year 2018. We do not accept that this is a case of mere inadvertence. In our view, the Defendant’s conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find him guilty of misconduct in a professional respect as charged.

Sentencing

19. The Defendant has a clear disciplinary record.
20. In line with published policy, we shall give credit to the Defendant 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.

21. We bear in mind that the 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 practise medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.
22. We accept that there was nothing in the evidence to suggest that the Defendant prescribed DD to his patients improperly.
23. However, the Council has repeatedly emphasized the importance of proper record of DD in compliance with the statutory requirements. Medical practitioners being given the legal authority to supply DD must diligently discharge the corresponding responsibility to keep records in the prescribed form. As a matter of fact, the DD register is a simple form which can be filled in as a clerical exercise whenever drugs are received or dispensed, and there is nothing complicated about it. Any medical practitioner exercising proper care would have no difficulty at all in complying with the statutory requirements.
24. In our view, stringent control of DD is essential to avoid misuse and abuse. Failure to comply with the statutory requirements to keep proper DD registers may jeopardize the monitoring system of DD by public officers.
25. In the recent years, all cases of failing to comply with the statutory requirements to keep proper DD registers have been dealt with by removal from the General Register, and in less serious cases the operation of the removal order would be suspended for a period with the condition of peer audit.
26. We are told in mitigation that the Defendant has since the incident taken immediate remedial measures to rectify his shortcomings. In particular, the Defendant has familiarized himself with the statutory requirements on the format and entry of necessary information in the DD registers.
27. We accept that the Defendant has learnt his lesson but we need to ensure that the chance of his repeating the same or similar breach should be low.

28. Having considered the nature and gravity of this case and the mitigation advanced by the Defendant, we order in respect of charge (a) that the Defendant's name be removed from the General Register for a period of 1 month, and the operation of the removal order be suspended for a period of 6 months on the condition that he shall complete during the suspension period satisfactory peer audit by a Practice Monitor to be appointed by the Council with the following terms:

- (a) the Practice Monitor shall conduct random audit of all or any of the clinic(s) of the Defendant's practice with particular regard to the keeping of dangerous drugs registers;
- (b) the peer audit should be conducted without prior notice to the Defendant;
- (c) the peer audit should be conducted at least once during the 6-month suspension period;
- (d) during the peer audit, the Practice Monitor should be given unrestricted access to all parts of the Defendant's clinic(s) and the relevant record(s) which in the Practice Monitor's opinion is necessary for proper discharge of his duty;
- (e) 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;
- (f) in the event that the Defendant does not engage in active practice at any time during the suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until the completion of 6-month suspension period; and
- (g) in case of change of Practice Monitor at any time before the end of the 6-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.

29. We further order in respect of charge (b) that a warning letter be issued to the Defendant.

Prof. Felice LIEH-MAK, GBS, CBE, JP
Chairperson of the Inquiry Panel
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