

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY

MEDICAL REGISTRATION ORDINANCE, CAP. 161

Date of hearing: 12 January 2011

Defendants: Dr MAC Wing Yan Miranda (麥穎茵醫生) (1st Defendant)
Dr LEUNG Sze Wai Sandy (梁思慧醫生) (2nd Defendant)
Dr CHEUNG Hoi Yan (張凱恩醫生) (3rd Defendant)

1. The charges alleged against Dr MAC Wing Yan Miranda (1st Defendant) are that:

“She, being a registered medical practitioner, was convicted at the Eastern Magistrates’ Courts on 15 May 2008 of :-

- (a) failing to use a separate page within the register or separate part of the register for entries made with respect to different dangerous drugs, namely Diazepam 5mg containing Diazepam, Duromine 30mg, Duromine 15mg and Phentermine 15mg containing Phentermine, contrary to Regulations 5(1)(c) and 5(7) of the Dangerous Drugs Regulations made under the Dangerous Drugs Ordinance, Chapter 134, Laws of Hong Kong, which is an offence punishable with imprisonment;
- (b) failing to use a separate page within the register or separate part of the register for entries made with respect to different strengths of preparations comprised within the class of dangerous drugs, namely Duromine 15mg and Duromine 30mg containing Phentermine, contrary to Regulations 5(1)(c) and 5(7) of the Dangerous Drugs Regulations made under the Dangerous Drugs Ordinance, Chapter 134, Laws of Hong Kong, which is an offence punishable with imprisonment;
- (c) failing to, in accordance with Regulations 5 and 6 of the Dangerous Drugs Regulations made under the Dangerous Drugs Ordinance,

enter in a register that she kept in chronological sequence in the form specified in the First Schedule true particulars with respect to every quantity of a dangerous drug namely Duromine 15mg, Duromine 30mg and Duromine 40mg containing Phentermine, obtained by her and supplied by her, contrary to Regulations 5(1)(a) and 5(7) of the Dangerous Drugs Regulations made under the Dangerous Drugs Ordinance, Cap. 134, Laws of Hong Kong, which is an offence punishable with imprisonment.”

2. The charge alleged against Dr LEUNG Sze Wai Sandy (2nd Defendant) is that:

“She, being a registered medical practitioner, was convicted at the Eastern Magistrates’ Courts on 15 May 2008 of an offence punishable with imprisonment, namely failing to, in accordance with Regulations 5 and 6 of the Dangerous Drugs Regulations made under the Dangerous Drugs Ordinance, enter in a register that she kept in chronological sequence in the form specified in the First Schedule true particulars with respect to every quantity of a dangerous drug namely Loran 2mg containing Lorazepam, obtained by her and supplied by her, contrary to Regulations 5(1)(a) and 5(7) of the Dangerous Drugs Regulations made under the Dangerous Drugs Ordinance, Cap. 134, Laws of Hong Kong.”

3. The charge alleged against Dr CHEUNG Hoi Yan (3rd Defendant) is that:

“She, being a registered medical practitioner, was convicted at the Eastern Magistrates’ Courts on 15 May 2008 of an offence punishable with imprisonment, namely failing to, in accordance with Regulations 5 and 6 of the Dangerous Drugs Regulations made under the Dangerous Drugs Ordinance, enter in a register that she kept in chronological sequence in the form specified in the First Schedule true particulars with respect to every quantity of a dangerous drug namely Nalion 0.25mg containing Alprazolam, obtained by her and supplied by her, contrary to Regulations 5(1)(a) and 5(7) of the Dangerous Drugs Regulations made under the Dangerous Drugs Ordinance, Cap. 134, Laws of Hong Kong.”

Facts of the case

4. There are 3 clinics involved in the case: the Causeway Bay Clinic, the Parkview Clinic and the Aberdeen Clinic.

5. The 1st Defendant practised at all 3 clinics. The 2nd Defendant practised at the Causeway Bay Clinic. The 3rd Defendant practised at the Aberdeen Clinic.
6. On 24 August 2007, staff of the Department of Health conducted inspections to all 3 clinics. It was revealed that the 3 Defendants failed to keep proper dangerous drugs registers in respect of the dangerous drugs in accordance with the requirements of the Dangerous Drugs Regulations. The 3 Defendants were summoned for the offence of failing to keep a proper register of dangerous drugs in accordance with the requirements of the Dangerous Drugs Regulations. All 3 Defendants pleaded guilty to the offences and were duly convicted of the respective offences on 15 May 2008 at the Eastern Magistrates' Courts.

Council's findings

7. We are satisfied that each of the 3 Defendants was convicted of the criminal offences set out in the disciplinary charges. We find them guilty as charged.

Sentencing

8. All 3 Defendants have a clear record.
9. All 3 Defendants honestly admitted their responsibilities throughout preliminary investigation and in the inquiry. They also pleaded guilty at the criminal trial, which shows their remorse and insight into the problems. This in turn reflects that it is unlikely that they would re-offend. We give them credit in sentencing, in line with our policy as stated in the Practice Directions.
10. We accept that all 3 Defendants have adopted some remedial measures to ensure compliance with the statutory requirements.
11. We have emphasized in many previous cases that it is important for doctors to strictly comply with the statutory requirement to keep proper dangerous drugs registers. The requirements are designed to ensure that all dangerous drugs are properly accounted for and documented, so as to prevent abuse and guard against the drugs from falling into the wrong hands. Doctors who choose to avail themselves of the legal right to possess and supply dangerous drugs must comply with the corresponding duty to keep proper registers. The

requirements are to ensure that the authorities can readily trace and verify the movement of the dangerous drugs. It is no excuse to say that the movements can be traced from various other documents. As the Court has pointed out in many cases, non-compliance with the statutory form is not a minor or technical breach. See for example the Court of Appeal's observation in the case of *Ng Mei Sin* [1995] that any breach of the Dangerous Drugs Regulations must be treated seriously, as the Regulations seek to ensure that drugs legitimately supplied to doctors are fully and carefully controlled so that the risk of those drugs falling into the wrong hands is minimized.

12. The prescribed form for dangerous drugs registers is a simple form. It is also reproduced in the Professional Code and Conduct for ready reference of doctors. As the Court of Appeal said in the case of *Lai Chung Lim* [1996], the dangerous drugs 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. A doctor exercising proper care would have no difficulty at all in complying with the requirements.
13. Cases of failure to keep proper registers of dangerous drugs are consistently visited by removal from the General Register, save for exceptional cases where there are strong mitigating factors.
14. We have looked at the dangerous drugs registers in question carefully. While we accept that the majority of the charges in the present case are a matter of form, we must also have regard to the large number of dangerous drugs involved and the nature of those drugs, some of which are drugs of abuse. In some cases essential information, such as the opening balance, the quantities supplied and the running balance, were entirely missing, making it impossible to trace and verify the movement of the drugs at all. This completely defeated the purpose of the register.
15. In the case of the 2nd Defendant, the quantity of drugs involved is small, and the missing information can be readily verified from the invoice, the number of which was entered in the register. We also note that there were frequent stock taking to verify the accuracy of the information. This is an exceptional situation which justifies a lenient sentence.
16. Having regard to the gravity of the charges and the mitigating factors, we make the following orders:-

- (a) The 1st Defendant's name be removed from the General Register for a period of 3 months, and the removal order be suspended for a period of 12 months, subject to the condition to be detailed below.
 - (b) The 2nd Defendant be reprimanded, and the reprimand be suspended for a period of 12 months, subject to the condition to be detailed below.
 - (c) The 3rd Defendant's name be removed from the General Register for a period of 2 months, and the removal order be suspended for a period of 12 months, subject to the condition to be detailed below.
17. The condition applicable to all 3 Defendants is that their practices during the suspension period shall be subject to satisfactory inspection and audit by a supervising doctor to be appointed by the Council in accordance with the following terms:-
- (a) The supervising doctor shall conduct random audit of the Defendant's practice with particular regard to the keeping of dangerous drugs registers.
 - (b) The audit should be conducted without prior notice to the Defendant.
 - (c) The audit should be conducted at least once every 6 months within the period of suspension.
 - (d) During the audit, the supervising doctor shall be given unrestricted access to all parts of the Defendant's clinic(s) and the relevant records which in the supervising doctor's opinion is necessary for proper discharge of his duty.
 - (e) The supervising doctor shall report directly to the Council the findings of the audit at the end of the 6th and 12th month from the date of publication in the Gazette of this order. If any irregularity is observed, the supervising doctor shall report such irregularity as soon as possible.
18. Breach of the above condition or commission of any further disciplinary offence will activate the suspended orders.

Prof. Felice Lieh-Mak, CBE, JP
Chairman, Medical Council