

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Date of hearing: 18 January 2011
Defendant: Dr KONG Ching Boon (江正本醫生)

1. The charges alleged against the Defendant, KONG Ching Boon, are that:

“He, being a registered medical practitioner:

(a) was convicted at the Kowloon City Magistrates’ Courts on 24 April 2009 of two counts of an offence punishable with imprisonment, namely failing to keep register or records of a dangerous drug, 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;

(b) failed to report to the Medical Council of the said convictions within 28 days of the convictions, contrary to section 29 of the Code of Professional Conduct for the Guidance of Registered Medical Practitioners issued by the Medical Council of Hong Kong.”

Facts of the case

2. On 4 September 2008, staff of the Department of Health conducted an inspection at the office of the Defendant. A number of dangerous drugs were found. When the Department of Health staff asked for the dangerous drugs registers which were required to be kept in accordance with the Dangerous Drugs Regulations, the Defendant said that there was no such register. There was also no record of the dangerous drugs at all.

3. The Defendant was summoned for a number of counts of the offence of failing to keep a dangerous drug register in accordance with the Dangerous Drugs Regulations. On 24 April 2009, the Defendant pleaded guilty to 2 summonses after plea bargaining with the Prosecution. The Prosecution did not proceed with the other 4 summonses.
4. The Defendant reported the convictions to the Medical Council on 9 June 2009.

Council's findings

5. The convictions and the fact that the Defendant did not report the convictions to the Council within the time limit of 28 days are not disputed by the Defence.
6. In respect of charge (b), despite the fact that the late report was admitted by the Defendant, it is the Council's duty to decide whether such conduct falls below the standard expected and therefore constitutes professional misconduct.
7. Under section 29 of the Code of Professional Conduct, all registered medical practitioners are required to report any criminal conviction for an offence punishable by imprisonment within 28 days of the conviction. This is a long standing requirement. Failure to comply with the requirement is conduct below the standard expected amongst registered medical practitioners, and constitutes professional misconduct.
8. We are satisfied that both charges are proven to the required standard. We find the Defendant guilty of both charges (a) and (b).

Sentencing

9. The Defendant has a clear record.
10. The Defendant honestly admitted the facts both during preliminary investigation and in this inquiry. We give him credit in sentencing, in accordance with our policy stated in the Practice Directions.

11. According to mitigation in the criminal proceeding, the office in which the dangerous drugs in question were found was the head office of the Defendant's medical group. The 6 summonses originally issued against the Defendant involved over 10,000 tablets and/or capsules. After plea bargaining, the Defendant was convicted of only 2 summonses involving only 979 tablets or capsules. While we shall disregard the other 9,715 tablets/capsules for which the Defendant was not convicted, we cannot take this case as involving only small quantities of dangerous drugs.
12. The dangerous drugs in the 2 summonses for which the Defendant was convicted are drugs of potential abuse. Furthermore, this is not a case of simply failing to comply with the prescribed form, but a case of not maintaining any dangerous drug register at all.
13. This Council has emphasized in many previous cases that it is important for doctors to strictly comply with the statutory requirement to keep dangerous drugs registers, for the reason that without such registers it will be impossible to trace the movement of the dangerous drugs and 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. That duty is an onerous one, and as pointed out by the Court, non-compliance with the duty is not a minor or technical breach. We accept 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.
14. According to the curriculum vitae, the Defendant is the founder of quite a number of organizations, including a holding company, a cosmetic centre, and an education centre. He is also the medical director of other organizations including a health education magazine, a skin care company and a healthcare company. He should be alert to the relevant legal requirements governing his obligations in the areas concerned.
15. According to the transcript of the criminal proceeding, soon after graduation he started a medical group which in 7 years time developed into a large group with 20 clinics. He personally employed 35 doctors and worked together with

60 doctors. A person in his position bears administrative and supervisory responsibilities in ensuring that the medical group and the clinics comply with the legal requirements governing medical practice. He should be particularly alert to those requirements.

16. We note from the Defendant's explanation to the Preliminary Investigation Committee that the Defendant issued a circular in October 2008 to all the clinics under the group "*to remedy the situation of poor record keeping*". While we have no evidence of the record keeping situation of the clinics, we shall disregard this for the reason that the present case concerns failure to keep registers of the dangerous drugs kept in the head office but not the clinics.
17. This is a case towards the serious end of the scale for similar offences. The Defendant being the person in charge of the whole medical group should be particularly careful in ensuring compliance with the legal requirement. Other than his honest plea, there is no mitigation of weight.
18. Having regard to the gravity of the case and the mitigating factor, we make the following orders:-
 - (i) In respect of charge (a), the Defendant's name be removed from the General Register for a period of 12 months.
 - (ii) The order in respect of charge (a) be suspended for a period of 2 years from the date of publication of the order in the Gazette, subject to the condition of 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, 12th, 18th and 24th month respectively 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.

- (iii) In respect of charge (b), the Defendant be reprimanded.

Other matters

- 19. The Defendant is registered with a provisional practising certificate in the People's Republic of China. In line with our moral obligation to corresponding authorities in other jurisdictions and as a matter of comity, we direct the Secretary to notify the relevant authorities of our findings in the inquiry for them to consider whether any disciplinary action should be taken. Our judgment in this case should be provided to those authorities.
- 20. While it is a matter for the Prosecution as to how to deal with future criminal cases of failure to keep proper dangerous drugs registers, we feel obliged as the regulatory body of registered medical practitioners to make the following observation. The Defendant was originally summoned in respect of 10,694 tablet/capsules. However, the Prosecution proceeded with only 2 summonses in respect of only 979 tablets/capsules which accounted for less than 10% of the total quantity involved. The drugs involved in the dropped summonses were also of serious gravity, such as diazepam which is a common drug of abuse. The 2 summonses, which the Defendant pleaded guilty to, simply do not reflect the overall gravity of the case at all.
- 21. We also note with concern that Defence Counsel (Mr. Albert Poon) in the criminal proceeding mitigated on the basis that before 2004 there was no such requirement under regulation 5 of the Dangerous Drugs Regulations to keep a dangerous drug register in the prescribed form. That is a wrong statement of the legal position, as the requirement has been in place for a long time before 2004. The prescribed form in its present format has been in place at least since

1966.

22. For the avoidance of doubt, we have disregarded these matters in sentencing, as we are constrained to deal with only the offences for which the Defendant was convicted.

Miss WAN Lai-yau Deborah, BBS JP
Temporary Chairman, Medical Council