

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 LY Chi Quan Benjamin (李志均醫生) (Reg. No. M10882)  
Date of hearing: 23 January 2014

1. The amended charges alleged against the Defendant, Dr LY Chi Quan Benjamin, are :

“That he, being a registered medical practitioner, was found guilty of unsatisfactory professional conduct and/or professional misconduct by the Medical Council of New South Wales on or about 15 December 2010 in Proceeding No. 40009/10 that:

- (1) on divers dates from 2005 to 2008, he inappropriately prescribed to 9 patients in New South Wales (“NSW”), Australia Schedule 4D drugs (restricted substance);
- (2) on divers dates from 2005 to 2008, he inappropriately prescribed to 5 patients in NSW, Australia Schedule 8 drugs (drugs of addiction); and
- (3) on divers dates from 2005 to 2008, he failed to keep adequate patient records in respect of 8 patients in NSW, Australia.

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

**Facts of the case**

2. The Defendant’s name has been included in the General Register since 22 August 1996 and there is no dispute that the Defendant was at all material times living in and practising medicine in Australia.
3. In October 2007, the Health Care Complaints Commission (“HCCC”) of Australia received an anonymous complaint about the Defendant’s approach to the prescription of benzodiazepines. The Pharmaceutical Services Branch of the Department of Health of Australia then conducted an investigation and identified 12 patients for whom the Defendant was prescribing drugs containing restricted substances and/or drugs of addiction over a long period and/or in large quantities and/or without appropriate authority from the Department of Health of Australia.

4. On 13 December 2010, the Defendant came before the New South Wales (“NSW”) Medical Tribunal for hearing of professional misconduct charges laid against him by the HCCC. Through his counsel, the Defendant admitted that he demonstrated inadequate knowledge, skill or judgment in relation to each of the 12 identified patients. He also admitted that it was improper and unethical for him to prescribe drugs of addiction to 4 of the 12 identified patients without authority from the Department of Health of Australia. He further admitted that he failed to keep adequate medical records in relation to 9 of the 12 identified patients.
5. Then on 15 December 2010, the NSW Medical Tribunal handed down its written judgment (“the Judgment”) on the Defendant [see: HCCC v Dr Ly [2010] NSWMT 20]. The Defendant was found guilty of professional misconduct and was reprimanded. The NSW Medical Tribunal also imposed certain conditions on the Defendant’s registration as medical practitioner [see: Annexure A to the Judgment] and the Defendant was ordered to pay the costs of the HCCC.
6. By a letter dated 31 January 2011 from the NSW Medical Council, the Secretary of the Medical Council was informed of the above-mentioned complaints and disciplinary proceedings against the Defendant in Australia.

### **Burden and Standard of Proof**

7. 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.
8. There is no doubt that each of the allegations made against the Defendant here is very serious. We need to look at all the evidence and to consider and determine each of the charges separately.

### **Findings of Council**

9. Whilst section 21(1)(b) of the Medical Registration Ordinance is silent upon the matter, we have reached the view that the provision can relate to professional misconduct outside Hong Kong.
10. Through his solicitor, the Defendant frankly admitted and accepted the findings of fact set forth in the Judgment of the NSW Medical Tribunal [see: pp. 2 to 5 of the Judgment]. We are satisfied on the evidence that the Defendant had on divers dates from 2005 to 2008 prescribed drugs containing restricted substances and/or drugs of addiction to patients in an inappropriate manner. We are also satisfied on the evidence that during the

said period of time the Defendant had failed to keep adequate patient records in that he had failed to take a full history and/or to record a treatment plan. In our view, the Defendant's conduct has clearly fallen below the standards of conduct which is expected of members of the profession.

11. We therefore find the Defendant guilty of professional misconduct as charged.

### **Sentencing**

12. The Defendant has a clear record.
13. In accordance with our published policy, we shall give him full credit for his frank admission and full cooperation, both during preliminary investigation and in this inquiry.
14. We accept that the Defendant has taken active steps to reform himself and to ensure proper medical records will be kept. We also noted that the Defendant has fully complied with the conditions imposed by the NSW Medical Tribunal. In addition, the Defendant has successfully completed courses on "Medical Ethics" and "Issues in General Practice Prescribing" organized by the Monash University, Australia. We are of the view that the chance of his committing the same or similar disciplinary offence will be low.
15. Having regard to the gravity of the case and what we heard from the Defendant's solicitor in mitigation, we make the following orders:-
  - (1) the Defendant be reprimanded in respect of all the charges; and
  - (2) the order for reprimand shall be published in the Gazette.

### **Other Remark**

16. We wish to point out that the sentence imposed on the Defendant is on the lenient side owing to the special circumstances of the case. We must emphasize the Medical Council always takes a serious view on cases involving inappropriate prescriptions of restricted drugs and/or drugs of addiction.

Prof. Felice LIEH-MAK, GBS, CBE, JP  
Temporary Chairman, Medical Council