

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr YUEN Kai Tak (袁啟德) (Reg. No. M07144)

Date of hearing: 12 February 2014

1. The charge against the Defendant, Dr YUEN Kai Tak, is that:

“He, being a registered medical practitioner, was convicted at the District Court on 27 June 2011 of five counts of an offence punishable with imprisonment, namely “Agent deceiving his principal with documents which contain false particulars and which is intended to mislead the principal”, contrary to sections 9(3) and 12(1) of the Prevention of Bribery Ordinance, Cap. 201, Laws of Hong Kong.”

Facts of the case

2. On 27 June 2011 the Defendant was convicted after trial by District Judge Douglas Yau of 5 charges of being an agent, using a document with intent to deceive his principal, contrary to sections 9(3) and 12(1) of the Prevention of Bribery Ordinance, Cap. 201. He was sentenced to imprisonment for 18 months.
3. The Defendant subsequently appealed against the said conviction. On 29 June 2012, the Defendant’s appeal was dismissed by the Court of Appeal.
4. Briefly stated, the prosecution case, which was found to be true by the trial judge, was that the Defendant concealed the true ownership of the property in respect of which he had claimed private tenancy allowance (PTA) from the Government during the period of July 1990 to 2000. As a result, the Government was misled into paying the Defendant a total amount of PTA of \$2,256,694.25 in this period.

Findings of Council

5. Section 21(3) of the Medical Registration Ordinance (MRO) expressly provides that:-

“Nothing in this section shall be deemed to require the Council to inquire into the question whether the registered medical practitioner was properly convicted but the Council 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.”

6. The Council is clearly entitled to take the said conviction as conclusively proven against the Defendant. The Defendant frankly accepted that he is not going to challenge the correctness of the said conviction.
7. We do not rule out the possibility that it is open in disciplinary proceedings to go behind the conviction but this would only be justified in exceptional circumstances [see: Issac Paul Ratnam v The Law Society of Singapore; Privy Council Appeal No.10 of 1974; per Lord Simon at p.11].
8. We will not attempt to lay down what circumstances should be considered to be exceptional. Suffice it for us to say that the Defendant had testified at trial that the true owner of the property was one Dr Ho and not himself. However, this was disbelieved by the learned District Court judge and whose findings of facts and reasons for verdict were upheld on appeal. We are not persuaded that there are exceptional circumstances in this case which would justify the question whether the Defendant had been rightly convicted to be raised again.
9. Taking into consideration the transcript of the trial of the Defendant in the District Court and the Reasons for Judgment of the Court of Appeal, we are satisfied that the Defendant was convicted in Hong Kong of an offence punishable with imprisonment, namely, 5 counts of an offence of being an agent, using a document with intent to deceive his principal, contrary to sections 9(3) and 12(1) of the Prevention of Bribery Ordinance, Cap. 201, Laws of Hong Kong.
10. Therefore, we find the Defendant guilty of the disciplinary offence.

Sentencing

11. The Defendant has a clear disciplinary record. His name has been included in the General Register from 20 October 1988 to present but his name has never been included in the Specialist Register.
12. In line with our published policy, we shall give him credit for his frank admission in this Inquiry. However, given that there is hardly any room for dispute in a disciplinary case involving criminal conviction, the credit to be given to the Defendant must necessarily be of a lesser extent than in other cases.
13. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant for the criminal offence 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 the reputation of the profession.
14. In the present case, the Defendant received a total of \$2,256,694.25 as PTA over a period of nearly 11 years. Although the Defendant had already repaid the whole amount to the Government, we must also bear in mind that it was an elaborate arrangement engineered to enhance the financial benefits of the Defendant.
15. It is clearly stated in the Professional Code and Conduct that a particularly serious view is to be taken by the Council in respect of conviction for offences involving dishonesty. This is a case involving dishonesty but we agree that the chances of his committing the same or similar offence would be low.
16. Having considered the nature and gravity of this case and what we heard in the mitigation, we order that the Defendant's name be removed from the General Register for three months. We further order that the removal order be suspended for a period of one year.

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