

# 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 CHAN Tak Ming Paddy (陳德明醫生) (Reg. No. M07484)

Date of hearing: 12 March 2014

1. The charges against the Defendant, Dr CHAN Tak Ming Paddy, are that:

“He, being a registered medical practitioner:

- (a) was convicted at the Kowloon City Magistrates’ Courts on 18 September 2009 of an offence punishable with imprisonment, namely, Misconduct in Public Office, contrary to Common Law and punishable under section 101I(1) of the Criminal Procedure Ordinance, Chapter 221, Laws of Hong Kong; and
- (b) is guilty of misconduct in a professional respect in that he failed to report to the Medical Council the conviction mentioned in paragraph (a) above within 28 days of the conviction, contrary to section 29 of the Code of Professional Conduct (revised in January 2009) published by the Medical Council for the guidance of registered practitioners in Hong Kong.”

#### **Facts of the case**

2. The Defendant’s name has been included in the General Register from 12 September 1989 to present. The Defendant’s name has also been included in the Specialist Register under the speciality of Clinical Oncology since 4 March 1998.
3. On 18 September 2009, the Defendant was convicted after trial at the Kowloon City Magistrates’ Courts of the charge of Misconduct in Public Office, contrary to Common Law and punishable under section 101I(1) of the Criminal Procedure Ordinance, Chapter 221, Laws of Hong Kong. The particulars of the charge were

as follows:

“Contrary to common law and punishable under section 101I(1) of the Criminal Procedure Ordinance, Cap. 221 Laws of Hong Kong, in that sometime between the 1<sup>st</sup> day of January 2007 and early February 2007 in Hong Kong, he, being a public official namely a senior medical officer of the Queen Elizabeth Hospital, in the course of or in relation to his public office, without reasonable excuse or justification, willfully misconducted himself by obtaining for his personal use patients’ personal particulars from documents and/or data-handling systems of the said hospital or the Hospital Authority.”

4. Misconduct in Public Office was and still is an offence punishable with imprisonment. The Defendant was fined \$50,000 in consequence of the conviction.
5. The Defendant appealed against his conviction to the Court of First Instance. On 25 February 2010, his appeal was heard before the Court of First Instance. On 12 March 2010, the Court of First Instance handed down the Judgment and dismissed his appeal.
6. By a letter dated 23 March 2010 from his then solicitors, Messrs. Richards Butler (RB), the Defendant first reported to the Council of the said conviction. It was also mentioned in this letter that his appeal against conviction had been dismissed on 12 March 2010, and that he intended to appeal to the Court of Final Appeal.
7. On 24 November 2010, the Defendant’s appeal against conviction was heard before the Court of Final Appeal. On 6 December 2010, the Court of Final Appeal handed down the Judgment and unanimously dismissed his appeal.
8. By a Statutory Declaration dated 3 March 2014, Ms Oonagh Toner, the handling solicitor for the Defendant’s case at RB, explained to the Council that the belated report of the said conviction was entirely her own fault because she had given the Defendant an erroneous advice that there would be no need to report the said conviction pending determination of the Defendant’s appeal to the Court of First Instance.

## **Findings of Council**

9. 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.”

10. The Council is clearly entitled to take the said conviction as conclusively proven against the Defendant. In any case, the Defendant frankly accepted that he is not going to challenge the correctness of the said conviction.
11. Taking into consideration the transcript of the trial of the Defendant in the Kowloon City Magistrates’ Court and the Judgment of the Court of First Instance and of the Court of Final Appeal, we are satisfied that the Defendant was convicted in Hong Kong of an offence punishable with imprisonment, namely, Misconduct in Public Office, contrary to common law.
12. We therefore find the Defendant guilty of disciplinary offence (a).
13. As regards charge (b), it is clearly stated in paragraph 29.1 of the Code on Professional Conduct (the Code) that a doctor is required to report his conviction of an offence punishable by imprisonment within 28 days from the conviction, even if the matter is under appeal. Failure to report within the specified time will in itself be ground for disciplinary action; and in case of doubt the matter should be reported.
14. The mere fact that his conviction was under appeal could not relieve the Defendant of his duty to report. Despite the explanation of Ms Toner that the Defendant’s failure to report the said conviction in time was solely because of the erroneous legal advice that was given to him at the material time, we do not accept that there was any room for ambiguity in the understanding of paragraph 29.1 of the Code. The Defendant should not blindly follow Ms Toner’s legal advice. We therefore find the Defendant guilty of this charge.

## **Sentencing**

15. The Defendant has a clear disciplinary record. His name has been included in the General Register from 12 September 1989 to present. His name has also been included in the Specialist Register under the speciality of Clinical Oncology since 4 March 1998.
16. 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.
17. 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.
18. We accept that the Defendant has learnt his lesson and the chances of his committing the same or similar disciplinary offence(s) in the future would be low.
19. It is clearly stated in paragraph 1.1.5 of the Code that doctors should have regard to their responsibilities and liabilities under the Personal Data (Privacy) Ordinance. There is no doubt that patients' data had been obtained by the Defendant for his private purpose to advertise to those patients the private practice which he was about to establish upon leaving public service. The Defendant's misconduct was a flagrant disregard of the privacy of patients which ought to have been respected.
20. Having considered the nature and gravity of this case and what we heard in the mitigation, we order in respect of disciplinary offence (a) that the Defendant's name be removed from the General Register for 1 month. We also order that the removal order be suspended for a period of 12 months. As regards disciplinary charge (b), we further order that a warning letter be served on the Defendant.

**Other remarks**

21. The name of the Defendant is included in the Specialist Register under the speciality of Clinical Oncology. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration.

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