

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

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**DISCIPLINARY INQUIRY**  
**MEDICAL REGISTRATION ORDINANCE, CAP. 161**

Date of hearing: 28 February 2013

1<sup>st</sup> Defendant: Dr NG Sheung Yee (吳尚義醫生) (Reg. no M01387)

2<sup>nd</sup> Defendant: Dr WONG Tak Lun (黃德鄰醫生) (Reg. no M01482)

1. The charges alleged against the 1<sup>st</sup> Defendant, Dr NG Sheung Yee, is that:

“He, being a registered medical practitioner, failed to exercise due care in issuing medical documents in respect of his patient Madam [REDACTED] [REDACTED] (“the Patient”) in that he issued 2 receipts both dated 29 April 2010 and in the amount of \$6,080 to the Patient for the payment of the same surgical fee for Oesophagogastroduodenoscopy.

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

2. The charges alleged against the 2<sup>nd</sup> Defendant, Dr WONG Tak Lun, are that:

“He, being a registered medical practitioner, failed to exercise due care in issuing medical documents in respect of his patient Madam [REDACTED] [REDACTED] (“the Patient”) in that :-

- (a) he issued 2 receipts both dated 26 April 2010 and in the amount of \$500 to the Patient for the payment of a single consultation and the same medicine;
- (b) he issued 2 receipts both dated 3 May 2010 and in the amount of \$6,120 to the Patient for the payment of the same consultations and operation(s) on 28 April 2010 to 3 May 2010;
- (c) he issued 2 receipts both dated 6 May 2010 and in the amount of

\$1,500 to the Patient for the payment of a single consultation and the same medicine;

- (d) he issued 2 receipts both dated 13 May 2010 and in the amount of \$1,500 to the Patient for the payment of a single consultation and the same medicine; and
- (e) he issued 2 receipts both dated 20 May 2010 and in the amount of \$1,500 to the Patient for the payment of a single consultation and the same medicine.

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

### *Facts of the case*

3. The case involves the receipts issued by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to the same patient. The 1<sup>st</sup> Defendant was a specialist in General Surgery, and the 2<sup>nd</sup> Defendant was a general practitioner.
4. The Patient purportedly sustained injury to her back in an accident at work on the last date of her employment, i.e. 24 April 2010. She consulted the 2<sup>nd</sup> Defendant on 26 April 2010 for the injury. On 28 April 2010, the 2<sup>nd</sup> Defendant referred the Patient to the 1<sup>st</sup> Defendant for operation (i.e. oesophagogastroduodenoscopy) in relation to the Patient’s iatrogenic ulcer syndrome. The operation was performed on 29 April 2010, and the Patient was discharged from the hospital on 3 May 2010. The patient was followed up by the 2<sup>nd</sup> Defendant on 6 May, 12 May and 20 May 2010.
5. Receipts for the respective medical services were issued by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. However, the Patient later asked the 2<sup>nd</sup> Defendant for an additional set of receipts. The 2<sup>nd</sup> Defendant then relayed the request to the 1<sup>st</sup> Defendant. Subsequently, both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants issued an additional set of receipts to the Patient. The additional set of receipts were also issued in the form of originals, with no indication whatsoever that they were duplicates of an original set which had been issued earlier.

6. The Patient submitted the first set of receipts to her own insurer to claim for compensation, and submitted the second set of receipts to her employer for transmission to the employer's insurer in connection with her claim for employee compensation.
7. Compensation was paid by the Patient's own insurer. However, the Patient's claim for employee compensation from the employer's insurer failed. The Patient then pursued the employee compensation claim by civil litigation. There is no information as to whether the civil claim was successful.

### **Findings of Council**

8. Both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants admit the facts of the case. Nevertheless, it remains our responsibility to determine whether the conduct of each Defendant constitutes professional misconduct.
9. Section 26.4 of the Code of Professional Conduct gives clear directions on the issue of receipts by doctors:-

“Doctors must not issue more than one original receipt in respect of the same payment. Copy receipts must be clearly stated to be copies or duplicates. If it is necessary to issue separate receipts for fractions of the payment for a single item of service, it should be clearly stated in each receipt the amount of the full payment and that the receipt is in respect of the part payment only.”

10. This is a mandatory requirement which all doctors must comply with. The purpose of the requirement is to prevent multiple receipts from being used by unscrupulous patients to make multiple claims from different parties such as employers and insurers in respect of the same payment, but hiding the fact that there are parallel claims. If multiple original receipts are issued, the persons to whom the receipts are submitted for claiming compensation or reimbursement will not know that there can be parallel claims for the same payment. Doctors must not lend a helping hand to such illicit practice by issuing multiple original receipts.

11. The 1<sup>st</sup> Defendant issued the additional original receipt simply on the 2<sup>nd</sup> Defendant's request, without even asking for the reason for the additional receipt. Given the requirement in section 26.4 of the Code of Professional Conduct, this is clearly unacceptable conduct.
12. The 2<sup>nd</sup> Defendant admitted in his explanation to the Preliminary Investigation Inquiry that the Patient told him that she needed 2 sets of receipts in order to claim against both her own insurer and her employer's insurer, but argued that such conduct was not misconduct as the receipts were all truthful and not misleading at all. We do not wish to repeat the argument which was clearly absurd. In any case, the 2<sup>nd</sup> Defendant abandons that argument in the inquiry and accepts that his conduct constituted professional misconduct.
13. We must emphasize that doctors are required to issue reports and certificates on the basis that the truth of the contents can be accepted without question, and they must exercise care in issuing such documents. In respect of payment for medical services, the issue of multiple original invoices or receipts for the same payment is misleading in that they suggest that multiple payments have been received. When duplicate invoices or receipts are required to be issued, there is no reason for not stating that they are duplicates. Given the direction of section 26.4 of the Code, it is clear to every doctor what must be done when issuing duplicates.
14. We are satisfied that the 1<sup>st</sup> Defendant's conduct has fallen below the standard expected amongst registered medical practitioners. We find him guilty of professional misconduct as charged.
15. We are satisfied that the 2<sup>nd</sup> Defendant's conduct in respect of each charge has fallen below the standard expected amongst registered medical practitioners. We find him guilty of professional misconduct in respect of each of the charges.

### **Sentencing**

16. Both Defendants have a clear record.

17. We give them credit in sentencing for cooperation in this inquiry. In respect of the 1<sup>st</sup> Defendant who made honest admissions at the first opportunity during preliminary investigation, we give him a larger extent of credit.
18. In respect of the 1<sup>st</sup> Defendant, he has made contributions to the community in particular during the SARS epidemic. We accept that he did not act out of bad faith, but merely trusted the 2<sup>nd</sup> Defendant when the latter made the request for an additional original receipt. We accept that this is an isolated incident. We are of the view that he has learned a hard lesson, and the likelihood of re-offending is low.
19. In respect of the 2<sup>nd</sup> Defendant, we accept that there is no evidence of bad faith or improper advantage in issuing the additional original receipts. Although he initially challenged the charges during preliminary investigation, he sensibly admitted the charges in this inquiry after further legal advice. We accept that this is an isolated incident. We are of the view that he has learned a hard lesson, and the likelihood of re-offending is low.
20. Having regard to the gravity of the case and the mitigating factors, we make the following orders:-
  - (a) In respect of the 1<sup>st</sup> Defendant, a warning letter be served on him. The order shall not be published in the Gazette.
  - (b) In respect of the 2<sup>nd</sup> Defendant, a warning letter be served on him. The order shall be published in the Gazette.

**Other remarks**

21. The 1<sup>st</sup> Defendant's name is included in the Specialist Register under the specialty of General Surgery. While it is for the Education and Accreditation Committee to consider whether action should be taken in respect of his specialist registration under section 20N of the Medical Registration Ordinance, we are of the view that this case does not reflect adversely on his suitability to be included in the Specialist Register.

22. As we have indicated earlier, we make these lenient orders in the belief that the Defendants will not re-offend. We advise them to treasure the opportunity that we have given them and take particular care to prevent committing the same mistake again.

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

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Date of hearing: 28 February 2013

**Review under section 21(4B) of MRO**

1. This is a review under section 21(4B) of the Medical Registration Ordinance. We initiated this review because, after the conclusion of the inquiry this morning, there is evidence that the 2<sup>nd</sup> Defendant was convicted of a disciplinary offence previously on 14 October 2009. Parties were immediately informed of the review and all parties now appear.
2. We must point out that in the previous case, the 2<sup>nd</sup> Defendant was represented by the same Defence Counsel and the same solicitors, as in the present proceedings. While we accept that Defence Counsel has no duty to disclose the defendant's previous disciplinary record, we have to point out that all lawyers owe an overriding duty to the tribunal. We expect that legal representatives in the future would be frank with us in respect of the defendant's disciplinary record instead of capitalizing on the oversight of the Secretary. Defence Counsel accepted that he made a bad judgment in not making frank disclosure about the 2<sup>nd</sup> Defendant's previous disciplinary record.

If he had made the disclosure, this review would not have been necessary. For the avoidance of doubt, we have not taken this matter into consideration in conducting the review in respect of the orders we made this morning.

3. In view of the previous record of the 2<sup>nd</sup> Defendant, we have to re-assess whether there was mala fides when the 2<sup>nd</sup> Defendant committed the present misconduct.
4. The previous disciplinary offence was in respect of conviction for a criminal offence punishable with imprisonment, i.e. 3 counts of conspiracy to defraud. In the previous case, the 2<sup>nd</sup> Defendant conspired with 3 patients to defraud the patients' insurer. The 3 patients took out insurance policies with the same insurance company. Shortly after their insurance policies had been approved, all 3 patients started to submit insurance claims with supporting receipts issued by the 2<sup>nd</sup> Defendant. The receipts were for amounts which were either deliberately inflated or not paid, or where there was no consultation at all. Altogether 50 false receipts were issued, spanning a period of 2 years and 8 months from October 2004 to June 2007.
5. It was a systematic scheme repeated on a large number of occasions, running for an extended period of time. It involved blatant breach of the public trust in the integrity of the medical profession. The 2<sup>nd</sup> Defendant was ordered to be removed from the General Register for a period of 6 months, but suspended the application of the removal order for 2 years in order to give the 2<sup>nd</sup> Defendant an opportunity to rehabilitate himself.
6. Nevertheless, the 2<sup>nd</sup> Defendant committed the present misconduct 6 months afterwards. Given his previous involvement in an elaborate scheme for defrauding insurers, and his knowledge in the present case that the duplicate receipts were to be submitted to separate insurers for making separate insurance claims, there is no reason for him to issue the additional set of original receipts without stating that they were duplicates or copies.
7. According to his explanation to the Preliminary Investigation Committee, the 2<sup>nd</sup> Defendant had specifically considered the question whether the word

“COPY” should be printed in the duplicate receipts. Given the background of his previous involvement in the fraudulent scheme, the explanation of not being alert to any impropriety must be false. In the circumstances, it is an irresistible inference that he issued the additional original receipts at least with the intention of assisting the Patient to make parallel insurance claims to separate insurers in a manner which would conceal the fact that there were parallel claims.

8. As to the 1<sup>st</sup> Defendant, he admitted knowing about the 2<sup>nd</sup> Defendant’s criminal conviction and that this Council had held a disciplinary inquiry against him, but mistakenly believed that the previous case was in respect of sick leave certificates. He was of the belief that, given the criminal conviction, the 2<sup>nd</sup> Defendant would have been more careful afterwards, and therefore he continued to trust the 2<sup>nd</sup> Defendant when the latter asked him to issue an additional original receipt.
9. We are of the view that the 2<sup>nd</sup> Defendant’s criminal conviction undermined his trustworthiness. This should have put the 1<sup>st</sup> Defendant on alert and he should have exercised particular care before acceding to the 2<sup>nd</sup> Defendant’s request.
10. We bear in mind that the purpose of a disciplinary order is not to punish the doctor involved, but to protect the public from persons who are unfit to practise medicine for reasons of integrity, competence or otherwise, and to maintain public trust in the medical profession by upholding the reputation of the profession.
11. In light of our fresh findings in the review, we are of the view that the 2<sup>nd</sup> Defendant’s conduct involved breach, betrayal and abuse of the public trust in the medical profession. We cannot allow the misconduct of a delinquent doctor to undermine the public trust in the profession, and a clear message must be sent.
12. We revoke the orders against both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants which we made this morning, and substitute the following orders:-



- (a) In respect of the 1<sup>st</sup> Defendant, a warning letter be served on him. The order shall be published in the Gazette.
- (b) In respect of the 2<sup>nd</sup> Defendant, his name be removed from the General Register for a period of 1 month. The order cannot be suspended. The order shall be published in the Gazette in accordance with the provisions of the Medical Registration Ordinance.
13. Having sentenced for the present case, we have to consider whether the suspended order of removal for 6 months from the General Register against the 2<sup>nd</sup> Defendant imposed on 14 October 2009 should be activated.
14. The Council in the previous inquiry against the 2<sup>nd</sup> Defendant emphasized that the suspension order (which was more lenient than the orders in similar cases) was imposed owing to the combination of mitigating factors unique to that case and should not be taken as a precedent. The 2<sup>nd</sup> Defendant should have taken particular care to comply with the Code of Professional Conduct and avoid committing further disciplinary offences.
15. The 2<sup>nd</sup> Defendant had not taken advantage of the opportunity given to him to rehabilitate himself. To the contrary, he committed the present misconduct only 6 months later. This entirely rebutted the mitigation of genuine remorse urged upon this Council in the previous inquiry.
16. The suspension period of the previous order ran from 14 October 2009 to 13 October 2011. The present misconduct was committed within the suspension period, but the conviction for the misconduct is made after expiry of the suspension period.
17. The Medical Registration Ordinance is silent on the circumstances in which a suspended order can be activated. Defence Counsel for the 2<sup>nd</sup> Defendant argued that an analogy should be made with the provision of section 109C of the Criminal Procedure Ordinance, which requires that the conviction for the further misconduct be within the suspension period. We disagree. Section 109C provides that a suspended sentence may be activated “*if an offender is convicted of an offence.....committed during the operational period of a suspended sentence*” (emphasis added). What is required is that the further

offence be committed within the suspension period, not that the conviction be within the suspension period.

18. Defence Solicitor for the 1<sup>st</sup> Defendant is of the view that a power to suspend implies a power to activate. Defence Counsel for the 2<sup>nd</sup> Defendant eventually accepted that the Council has power to activate the suspended order in the present circumstances.
19. We are of the view that the legislative intent of the Medical Registration Ordinance in empowering the Council to suspend the application of an order is to ensure that the defendant involved will not commit further disciplinary offence during the suspension period. To hold otherwise will defeat the legislative intent. To require that the conviction for the further disciplinary offence be within the suspension period will subject the law to the fortuity of the scheduling of the further disciplinary inquiry, and the defendant can easily evade the Council's power to activate a suspended order by delaying the further inquiry. In the circumstances, we have the jurisdiction to consider whether the suspended order should be activated, and if activated whether in full or in part.
20. Having regard to the following factors, we are of the view that the suspended order should be activated:-
  - (a) soon after the suspended order the 2<sup>nd</sup> Defendant committed the present misconduct;
  - (b) the previous case and the present case both involved dishonesty; and
  - (c) the mitigation of genuine remorse which was relied upon by the Council in the previous inquiry has been entirely rebutted.
21. Having regard to all the circumstances, we order that 3 months of the suspended order be activated. As the previous and present disciplinary offences were committed 4 years apart, the activated order of 3-month removal and the present order of 1-month removal shall run consecutively. In other words, the 2<sup>nd</sup> Defendant's name shall be removed from the General Register for a total of 4 months.

*Other remarks*

22. The 2<sup>nd</sup> Defendant's previous disciplinary record was drawn to our attention by representatives of the media. This highlights the importance of open justice and transparency of the disciplinary inquiries of this Council. Had this inquiry been held in camera, the 2<sup>nd</sup> Defendant's previous record would probably have gone unnoticed, and the purpose of protecting the public would have been defeated.
23. We expect that legal representatives in future cases will make frank disclosure of the defendant's disciplinary record during mitigation, in case it does not accord with what we have been informed.
24. We retain the same view that this case does not reflect adversely on the suitability of the 1<sup>st</sup> Defendant to be included in the Specialist Register.
25. While it is for the Council in future to consider the 2<sup>nd</sup> Defendant's application for restoration to the General Register (if any) when it is made, we recommend that the Council should not approve the application unless there is cogent evidence of rehabilitation in respect of his integrity problems, and that the following conditions be imposed upon his restoration to the General Register:-
  - (a) The 2<sup>nd</sup> Defendant shall not practise in situations involving any financial arrangements with third parties (i.e. persons other than the patients), either directly or indirectly. Without prejudice to the generality of the condition, it includes a prohibition from practising where payment for the medical fee is either partially or completely covered by insurance, or made through or reimbursed by third parties such as employers. Therefore, before providing medical consultation or treatment, the 2<sup>nd</sup> Defendant must first ascertain whether any financial arrangements with third parties will be involved.
  - (b) The 2<sup>nd</sup> Defendant shall provide reports of his medical practice to this Council at 6-monthly intervals, starting from the date of restoration of his name to the General Register. The reports must include the payment methods involved for each patient.

- (c) The Council will review the situation after 2 years, and decide whether the conditions should be continued, varied or lifted.

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