

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Date of hearing: 28 April 2009
Defendant: Dr WALKER Brian Follett

1. The charges alleged against Dr WALKER Brian Follett are that:

“He, being a registered medical practitioner:

(a) was convicted at the Eastern Magistrates’ Courts on 15 August 2008 of four counts of “Failing to keep a register of dangerous drugs in the form specified in the First Schedule”, which is an offence punishable with imprisonment, 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) was convicted at the Eastern Magistrates’ Courts on 15 August 2008 of six counts of “Failing to keep a register or record of dangerous drugs”, which is an offence punishable with imprisonment, 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.”

2. The Defendant as a registered medical practitioner was authorized under the Dangerous Drugs Ordinance to obtain and supply dangerous drugs. By virtue of the Dangerous Drugs Regulations, he was required to keep a register of the dangerous drugs in the prescribed form.
3. On 31 July 2007, a search was conducted by officers of the Department of Health at the Defendant’s clinic. Checking of the stocks of dangerous drugs and the dangerous drugs register revealed that the Defendant had not kept the record as required. He was then prosecuted for 4 summonses of failing to keep the dangerous drugs register in the prescribed form, and 6 summonses of failing to

keep any record of the dangerous drugs he obtained or supplied. The offences were punishable with imprisonment up to a maximum of three years. The details of the dangerous drugs involved are set out in the Amended Brief Facts.

4. On 15 August 2008, the Defendant pleaded guilty to all 10 summonses and admitted the Amended Brief Facts at the Eastern Magistrates' Courts. He was convicted and sentenced to a fine of \$2,000 for each summons, making a total fine of \$20,000.
5. The Defendant admits the conviction and the facts of the offences before us today. In the circumstances, we are satisfied that the allegations in charges (a) and (b) of the Notice of Inquiry are proven to the required standard. We find him guilty on both charges.

Sentencing

6. The Defendant has a clear record. He has provided good character reference from professional colleagues and patients as well as his present employer in Australia. We accept that after the convictions he has received further training in prescribing dangerous drugs.
7. The Medical Council has all along taken a serious view of failing to keep proper record of dangerous drugs. Registered medical practitioners are authorized to supply dangerous drugs for the purpose of medical treatment, and there is a corresponding responsibility to keep proper records in the prescribed form. Failure to keep proper records is not merely a matter of technical breach. The purpose of such record keeping is to ensure that the dangerous drugs are traceable and to prevent abuse by unscrupulous members of the profession.
8. In cases involving significant quantities of drugs, the potential for abuse is a factor which we must take into consideration in sentencing. A defendant who mitigates on the basis that there was no abuse of the missing drugs should account for the missing drugs by cogent evidence showing that the drugs were properly prescribed and dispensed.
9. In this case large quantities of dangerous drugs had not been recorded. Altogether over 12,000 tablets of addictive drugs had not been recorded, amongst which 7,300 tablets were methadone. This is a matter of serious concern,

bearing in mind the potential for abuse where the dangerous drugs cannot be traced from the record.

10. The ten offences for which the Defendant was convicted involved the failure to keep proper records for an extended period of time of two years.
11. Having considered the evidence provided by the Defence, we accept that there was no evidence of abuse of the missing dangerous drugs and that the methadone tablets have been accounted for. We shall sentence on that basis. We also give credit for the Defendant's cooperative approach throughout the inquiry and his admission of the charges.
12. With regard to the gravity of the charges and the mitigation advanced, in particular his admission of the charges at the inquiry, 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 1 month;
 - (ii) in respect of charge (b), the Defendant's name be removed from the General Register for a period of 2 months;
 - (iii) given that the charges were of a similar nature and arose at the same time, the orders shall run concurrently.
13. Had it not been for his cooperative approach in the investigation and inquiry which reflects his remorse, we would have considered that an order of removal for 3 months would be appropriate.
14. We have considered whether the orders should be suspended from operation. We do not think that this is an appropriate case for suspension.

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