

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Dates of hearing: 29 July 2009 and 27 September 2009

Defendant: Dr TSE So So (謝素素醫生)

1. The charges alleged against Dr TSE So So are that:

“On 3 May 2004, she, being a registered medical practitioner,

- (a) as a person authorized by the Dangerous Drugs Ordinance, Chapter 134, to supply a dangerous drug, failed to enter in a register kept in accordance with regulations 5 and 6 of the Dangerous Drugs Regulations, Chapter 134, in chronological sequence in the form specified in the First Schedule of the said regulations true particulars with respect to every quantity of a dangerous drug, namely Phentermine (Phentermine 30mg CAP), obtained by her and/or supplied by her, whether to persons within or outside Hong Kong in that the balance entered into the register did not tally with the physical stock of the said dangerous drug;
- (b) as a person authorized by the Dangerous Drugs Ordinance, Chapter 134, to supply a dangerous drug, failed to enter in a register kept in accordance with regulations 5 and 6 of the Dangerous Drugs Regulations, Chapter 134, in chronological sequence in the form specified in the First Schedule of the said regulations true particulars with respect to every quantity of a dangerous drug, namely Phentermine (Panbesy 15mg CAP), obtained by her and/or supplied by her, whether to persons within or outside Hong Kong in that the balance entered into the register did not tally with the physical stock of the said dangerous drug;
- (c) as a person authorized by the Dangerous Drugs Ordinance, Chapter 134, to supply a dangerous drug, failed to enter in a register kept in accordance with regulations 5 and 6 of the Dangerous Drugs Regulations, Chapter 134, in chronological sequence in the form specified in the First Schedule of the said regulations true particulars with respect to every quantity of a dangerous drug, namely Phentermine (Panbesy 30mg CAP), obtained by her and/or supplied by her, whether to persons within or outside Hong Kong in that the balance entered into the register did not tally with the physical stock of the said dangerous drug;

- (d) as a person authorized by the Dangerous Drugs Ordinance, Chapter 134, to supply a dangerous drug, failed to enter in a register kept in accordance with regulations 5 and 6 of the Dangerous Drugs Regulations, Chapter 134, in chronological sequence in the form specified in the First Schedule of the said regulations true particulars with respect to every quantity of a dangerous drug, namely Chlordiazepoxide (Bralix), obtained by her and/or supplied by her, whether to persons within or outside Hong Kong in that the balance entered into the register did not tally with the physical stock of the said dangerous drug;
- (e) as a person authorized by the Dangerous Drugs Ordinance, Chapter 134, to supply a dangerous drug, failed to enter in a register kept in accordance with regulations 5 and 6 of the Dangerous Drugs Regulations, Chapter 134, in chronological sequence in the form specified in the First Schedule of the said regulations true particulars with respect to every quantity of a dangerous drug, namely Diazepam (Kratium 10mg TAB), obtained by her and/or supplied by her, whether to persons within or outside Hong Kong in that the balance entered into the register did not tally with the physical stock of the said dangerous drug;
- (f) as a person authorized by the Dangerous Drugs Ordinance, Chapter 134, to supply a dangerous drug, failed to enter in a register kept in accordance with regulations 5 and 6 of the Dangerous Drugs Regulations, Chapter 134, in chronological sequence in the form specified in the First Schedule of the said regulations true particulars with respect to every quantity of a dangerous drug, namely Diazepam (Synium 10mg TAB), obtained by her and/or supplied by her, whether to persons within or outside Hong Kong in that the balance entered into the register did not tally with the physical stock of the said dangerous drug;
- (g) as a person authorized by the Dangerous Drugs Ordinance, Chapter 134, to supply a dangerous drug, failed to enter in a register kept in accordance with regulations 5 and 6 of the Dangerous Drugs Regulations, Chapter 134, in chronological sequence in the form specified in the First Schedule of the said regulations true particulars with respect to every quantity of a dangerous drug, namely Chlordiazepoxide (Epsilon), obtained by her and/or supplied by her, whether to persons within or outside Hong Kong in that the balance entered into the register did not tally with the physical stock of the said dangerous drug;
- (h) as a person authorized by the Dangerous Drugs Ordinance, Chapter 134, to supply a dangerous drug, failed to enter in a register kept in accordance with regulations 5 and 6 of the Dangerous Drugs Regulations, Chapter 134, in chronological sequence in the form specified in the First Schedule of the said regulations true particulars with respect to every quantity of a dangerous drug, namely Diazepam

(Kratium 5mg TAB), obtained by her and/or supplied by her, whether to persons within or outside Hong Kong in that the balance entered into the register did not tally with the physical stock of the said dangerous drug;

- (i) as a person authorized by the Dangerous Drugs Ordinance, Chapter 134, to supply a dangerous drug, failed to enter in a register kept in accordance with regulations 5 and 6 of the Dangerous Drugs Regulations, Chapter 134, in chronological sequence in the form specified in the First Schedule of the said regulations true particulars with respect to every quantity of a dangerous drug, namely Phentermine (Duromine 30mg CAP), obtained by her and/or supplied by her, whether to persons within or outside Hong Kong in that the balance entered into the register did not tally with the physical stock of the said dangerous drug.

In relation to the facts alleged, she is guilty of misconduct in a professional respect.

2. The Defendant Doctor was cognizant of her right to have legal representation and she chose to waive that right.

Facts of the case

3. The name of the Defendant Doctor has been included in the General Register at all the material times.
4. Being a person authorized by the Dangerous Drugs Ordinance to supply dangerous drugs the Defendant Doctor has the duty to keep a register of the true particulars of dangerous drugs in accordance with regulations 5 and 6 of the Dangerous Drugs Regulations, Cap. 134.
5. On 3rd May 2004 the Officers of the Department of Health inspected the Dangerous Drug Register of the Defendant Doctor and found discrepancies between the quantities of dangerous drugs recorded in the registers and the amount in stock of 9 types of drugs handled by the Defendant Doctor in her clinic.
6. The Defendant Doctor was convicted of all 9 charges by the Magistrates' Court.
7. The convictions were quashed on appeal to the Court of First Instance. The reasons for the decision were technical in nature and are not relevant to the consideration of this Council.
8. The Court of Final Appeal ruled that the convictions were wrongly quashed but the convictions were not restored for compassionate reasons.

9. The end result, which is relevant to this Council, is that the failure by the Defendant Doctor to keep true particulars in the Dangerous Drugs Register has been proven beyond reasonable doubt.
10. These facts were not disputed.

Evidence of the Defendant Doctor

11. The Defendant Doctor gave evidence on her own behalf.
12. The Defendant Doctor claimed that she had instructed her nursing staff to keep the Dangerous Drug Register and the nurses made mistakes in the entry. We must point out that the keeping of a proper register is the sole responsibility of a registered doctor. Although a doctor may be assisted by his/her nurses in the discharge of this duty, this responsibility cannot be delegated.
13. The Defendant Doctor attributed the discrepancies between the registers and the stocks to the differences between the actual contents of drugs in the bottles and the packet markings. She said that sometimes it would be more; sometimes less and sometimes the drugs were crushed. Although there might have been discrepancies between the actual quantities and the quantities marked by the manufacturer, such discrepancies were very small and could not explain in any way the large discrepancy in the Dangerous Drug Register of over 9,000 capsules/tablets in total. Even if her evidence were to be the case, the shortage or excess would have cancelled each other out. Furthermore, if there was any discrepancy between the amounts of capsules/tablets supplied and the amount received, this should have been rectified immediately. There is no evidence that she took any such action.
14. Furthermore, the Defendant Doctor was not able to give a cogent explanation for continuing to order a large amount of dangerous drugs despite the fact that the registers showed large quantities in stock.
15. In answer to the question on how the Defendant Doctor could continue to dispense the dangerous drug when the register showed a negative balance, she replied that the nurse would make up that balance from another bottle. This is an unacceptable practice.
16. The Defendant Doctor asserted that this was not a case concerning the hiding of drugs behind false panels or taken out of the dispensary and she had no gain and no patient had suffered. We do not accept this defence. It is the obligation of the Defendant Doctor to enter true particulars of each and every dangerous drug in the current register. Failure to do so, for whatever reasons, constitutes an infringement of the Dangerous Drug Ordinance. It also defeats the very purpose of keeping a true record of the transactions, and makes it impossible to trace the transactions and prevent abuse of dangerous drugs.
17. The Defendant Doctor said that some checks were done periodically. It would appear from the Register that some checks were done. However, the Defendant Doctor should have rectified the Register by way of marginal notes

or footnotes in accordance with Regulations 6 (c) and should have taken steps to discount the variations contributed by the contents of the bottle. There is no evidence that such steps were taken. Therefore, we are not satisfied with her defence.

18. In her address to Council the Defendant Doctor admitted that the failure to keep a proper Dangerous Drug Register constitutes professional misconduct.

The findings of Council

19. Doctors in Hong Kong are uniquely placed to both prescribe and dispense drugs. This privilege carries with it a heavy responsibility to take due care in the process of managing, storing and dispensing of drugs.
20. This is especially germane in the case of dangerous drugs where the registered medical practitioners are given the legal right to possess and supply dangerous drugs on the basis that the statutory requirements in respect of safe custody and record keeping are properly complied with.
21. The Defendant Doctor has a positive duty to act in a particular way for the safety of the public and to ensure proper control over the distribution of dangerous drugs in the community.
22. Dangerous Drugs Registers are very important documents. That is the only way that the distribution of dangerous drugs by doctors in the community can be monitored.
23. We have considered each of the 9 charges separately.
24. The discrepancies are large as it is; not to mention the possibility of an even larger discrepancy not discoverable in the face of the failure to keep true particulars with respect to every quantity of a dangerous drug.
25. We are satisfied that the allegations in charges (a) to (i) of the Notice of Inquiry are proven to the required standard.
26. We are satisfied that the Defendant's conduct has fallen far short of the standard expected amongst registered medical practitioners.
27. We are satisfied that her conduct constitutes professional misconduct. We find her guilty of charges (a) to (i).

Sentencing

28. The Defendant has a clear record. Defense raised in mitigation that the Defendant has been subject to the stress of legal proceedings over a period of five years.

29. We note that the Defendant has provided good references from her patients.
30. 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. 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.
31. In this case a substantial quantity of dangerous drugs was involved. The potential for abuse is a factor that we must take into consideration in sentencing.
32. Although this does not form part of the charges, we are concerned about the Defendant's practice of not keeping the storage of dangerous drugs in a secure manner. The Dangerous Drugs Ordinance specifies that every dangerous drug should be kept in a locked receptacle which can be opened only by the registered practitioner or an authorized person specified in the Ordinance. However, the Defendant said in evidence that she left the cabinet unlocked throughout the day and allowed the clinic assistants unsupervised access to the dangerous drugs therein.
33. With regard to the gravity of the charges and the mitigation advanced, we make the following orders:
 - i. In respect of charge (a) the Defendant's name be removed from the Register for a period of two months;
 - ii. In respect of charge (b) the Defendant's name be removed from the Register for a period of two months;
 - iii. In respect of charge (c) the Defendant's name be removed from the Register for a period of two months;
 - iv. In respect of charge (d) the Defendant's name be removed from the Register for a period of two months;
 - v. In respect of charge (e) the Defendant's name be removed from the Register for a period of two months;
 - vi. In respect of charge (f) the Defendant's name be removed from the Register for a period of two months;
 - vii. In respect of charge (g) the Defendant's name be removed from the Register for a period of two months;
 - viii. In respect of charge (h) the Defendant's name be removed from the Register for a period of two months;
 - ix. In respect of charge (i) the Defendant's name be removed from the Register for a period of two months;
 - x. Given that the charges were of a similar nature, the orders shall run concurrently.
34. We have considered the Defendant's mitigation that she had taken steps to reduce the variety and quantity of dangerous drugs. We are not convinced that

the Defendant understands how to keep proper dangerous drugs records and the steps she alleged to have taken are not sufficient.

35. We have considered whether the order should be suspended from operation. We do not consider that this is an appropriate case for suspension.
36. We recommend that when the Defendant applies for restoration to the General Register, the Council should consider imposing the following conditions:-
 - i. That the Defendant should present acceptable evidence of having taken a course in the proper keeping of the dangerous drugs registers.
 - ii. That the Defendant should undergo a satisfactory assessment of proper handling of dangerous drugs by a person appointed by the Council.
 - iii. That the Defendant should undergo peer supervision in order to ensure the Defendant will comply with the requirements of the Dangerous Drugs Regulations for a period of 12 months.

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