

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: 14 July 2010  
Defendant: Dr CHEUNG Ying Kit (張英傑醫生)

1. The charges alleged against the Defendant, Dr CHEUNG Ying Kit are that:

1<sup>st</sup> Notice of Inquiry

“He, being a registered medical practitioner:

- (a) was convicted at the Kwun Tong Magistrates’ Courts on 7 July 2008 of three counts of an offence punishable with imprisonment, namely failing to keep a register of dangerous drugs in the form specified in the First Schedule, 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 10 July 2008 of four counts of an offence punishable with imprisonment, namely failing to keep a register of dangerous drugs in the form specified in the First Schedule, 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;
- (c) failed to report to the Medical Council of the said convictions of 7 July 2008 within 28 days thereof, contrary to Part II of the updated Code as promulgated in Issue 13 – April 2007 of the Newsletter of the Medical Council of Hong Kong, and by reason of the fact alleged he is guilty of misconduct in a professional respect;
- (d) failed to report to the Medical Council of the said convictions of 10 July 2008 within 28 days thereof, contrary to Part II of the updated

Code as promulgated in Issue 13 – April 2007 of the Newsletter of the Medical Council of Hong Kong, and by reason of the fact alleged he is guilty of misconduct in a professional respect.”

## 2<sup>nd</sup> Notice of Inquiry

“On 9 October 2008, he, being a registered medical practitioner, was convicted at the Kwun Tong Magistrates’ Courts of four counts of an offence punishable with imprisonment, namely failing to keep a proper register of dangerous drug, contrary to Regulation 5(1)(a) and 5(7) of the Dangerous Drugs Regulations made under the Dangerous Drugs Ordinance, Cap. 134, Laws of Hong Kong.”

### **Facts of the case**

2. The Defendant has been a registered medical practitioner since December 1960. In July 2008, he was practising in clinics in Central, Causeway Bay and Mongkok. In October 2008, he was practising in the same clinic in Mongkok.
3. On 7 July 2008, the Defendant was convicted in Kwun Tong Magistrates’ Courts of three counts of failing to keep a register of dangerous drugs in the form specified in the First Schedule of the Dangerous Drugs Regulations under the Dangerous Drugs Ordinance, Cap. 134, Laws of Hong Kong. The offences were committed on 28 August 2007, in relation to the Mongkok clinic.
4. On 10 July 2008, the Defendant was convicted in Eastern Magistrates’ Courts of four counts of the same offence under the Dangerous Drugs Regulations. The offences were committed on 30 August 2007, two in relation to the Central clinic and two in relation to the Causeway Bay clinic.
5. On 9 October 2008, the Defendant was convicted in Kwun Tong Magistrates’ Courts of four counts of the same offence under the Dangerous Drugs Regulations. The offences were committed on 11 January 2008, in relation to the Mongkok clinic.

6. The Defendant failed to report the convictions of 7 and 10 July 2008 to the Medical Council within 28 days of the convictions. The Defendant's solicitors reported those convictions to the Council on 2 October 2008.

### **Findings of the Council**

7. The convictions related to the following dangerous drugs:-

#### 7 July 2008 convictions

- (a) Panbesy 15mg capsules, involving a discrepancy of 3,218 capsules;
- (b) Panbesy 30mg capsules, involving a discrepancy of 2,104 capsules;
- (c) Redusa 25mg capsules, involving a discrepancy of 4,397 capsules;

#### 10 July 2008 convictions

- (a) Duromine 15 mg capsules, involving a discrepancy of 6 capsules;
- (b) Prothin 60mg capsules, involving a discrepancy of 12 capsules;
- (c) Atractil 75mg capsules, involving a stock of 614 capsules but the discrepancy could not be calculated for the lack of an opening balance in the register;
- (d) Panbesy 30mg capsules, involving a stock of 5,128 capsules but the discrepancy could not be calculated for the lack of an opening balance in the register;

#### 9 October 2008 convictions

- (a) Nalion 0.5mg tablets, involving 4,856 tablets, and the discrepancy lied in unauthorized changes to the register and the lack of some required particulars;
- (b) Duromine 15mg capsules, involving 1,343 capsules, and the discrepancy lied in unauthorized changes to the register and the lack of some required particulars;
- (c) Duromine 40mg capsules, involving 1,140 capsules, and the discrepancy lied in unauthorized changes to the register and the lack of some required particulars;
- (d) Prothin 60mg capsules, involving 1,506 capsules, and the discrepancy lied in unauthorized changes to the register and the lack of some required particulars.

8. The transcripts of trials in the criminal courts revealed that the Defendant was also summoned for other offences, i.e. 3 offences on 7 July 2008, an unknown

number of offences on 10 July 2008, and 6 offences on 9 October 2008. Those summonses were dismissed upon the prosecution offering no evidence. As the Defendant was not convicted on those offences, we have disregarded them completely in this inquiry, including the fact that the Defendant was summoned for those offences.

9. On the disciplinary charges of criminal conviction of an offence punishable with imprisonment, i.e. charges (a) and (b) in the 1<sup>st</sup> Notice of Inquiry and the only charge in the 2<sup>nd</sup> Notice of Inquiry, the Defence admitted that the Defendant was so convicted as stated in the respected charges. We find the Defendant guilty on charges (a) and (b) in the 1<sup>st</sup> Notice of Inquiry and the only charge in the 2<sup>nd</sup> Notice of Inquiry.
10. As to charges (c) and (d) in the 1<sup>st</sup> Notice of Inquiry, we are satisfied on the evidence that the Defendant had instructed his solicitors who handled the criminal cases to report the convictions to the Medical Council. The delay in reporting the convictions was due to the administrative oversight of the solicitors in failing to issue the draft letter dated 11 July 2008.
11. The Professional Code and Conduct (November 2000 version) emphasized in both Part I and Part II that it is the duty of a registered medical practitioner to report to the Medical Council any conviction of an offence punishable by imprisonment within 28 days of the conviction. This duty arises irrespective of whether the conviction is in Hong Kong or in other jurisdictions. Failure to make the report within the prescribed time by itself will be grounds for disciplinary action.
12. It is reasonable for the Defendant to rely on his solicitors to make the report, given that solicitors are members of a responsible and trustworthy profession who have a professional duty to implement the instructions of their clients. We are of the view that the Defendant by instructing his solicitors to make the report to the Medical Council almost immediately after the convictions has done what is reasonably required to fulfil the duty under the Professional Code and Conduct. There was no reason for the Defendant to suspect that the solicitors in this case had not made the report promptly.
13. In the exceptional circumstances of this case, we find the Defendant not guilty of charges (c) and (d) in the 1<sup>st</sup> Notice of Inquiry.

14. We wish to emphasize that it is the personal duty of all registered medical practitioners to ensure that criminal convictions are reported within the prescribed time. The facts of this case are exceptional, and the case does not set a precedent for those who fail to act with reasonable diligence to ensure compliance with the requirement.

### Sentencing

15. The Defendant has a clear record.
16. He admitted the charges of which he has been found guilty. While we give him credit for his admission of the charges, we must also have regard to the fact that the criminal convictions are indisputable in light of the certificates of trial issued by the courts. In cases of criminal conviction, the credit to be given for admission of the charges necessarily should be less than credit to be given in other cases. Nevertheless, some credit will be given in sentencing.
17. Doctors are given the legal right to possess and supply dangerous drugs, and there is a corresponding duty to comply with the statutory requirements prescribed in the Dangerous Drugs Ordinance and the subsidiary regulations. These requirements are designed to ensure that all dangerous drugs are properly accounted for and documented, so as to prevent abuse and avoid the drugs from falling into the wrong hands. This duty is onerous, and the Professional Code and Conduct emphasized that the records must be maintained in strict accordance with the statutory forms. We have stressed the importance of such duty on many occasions. As the magistrate pointed out during the October 2008 convictions, non-compliance with the statutory forms is not a minor matter or a technical breach.
18. The criminal conduct in charges (a) and (b) in the 1<sup>st</sup> Notice of Inquiry took place within two days of each other in August 2007. For that reason, we consider that the sentences can be treated on the same footing and be served concurrently.
19. However, the charge in the 2<sup>nd</sup> Notice of Inquiry is different in that after having been arrested in August 2007 there was every reason for him to exercise particular caution to ensure compliance with the statutory

requirements. Nevertheless, 5 months later he was still found to be violating the statutory requirements.

20. The drugs in question are not harmless drugs. Nalion in particular can be a drug of abuse. The other drugs can also have adverse effects to health, such as over-stimulation of the nervous system and increased blood pressure.
21. Large quantities of drugs were involved in the July 2008 convictions.
22. As for the October 2008 convictions, the quantities of discrepancy cannot be ascertained. However, we must have regard to the large stock of drugs involved. Changes to the dangerous drugs register have been made in a prohibited manner, thus rendering it impossible to trace the movement of the drugs as well as the quantities involved.
23. We must also take into consideration that in cases of large quantities of drugs which are unaccounted for, there is the potential for abuse. As the Defendant has been found to be in possession of large quantities of dangerous drugs and failed to record the drugs in the required manner, we are satisfied that it is necessary for the protection of the public to order that the sentences shall take effect as soon as possible.
24. Having regard to the gravity of the case and the mitigation advanced, we order that:-
  - (i) In respect of charge (a) in the 1<sup>st</sup> Notice, the appropriate sentence should be removal from the General Register for a period of 4 months. We give the Defendant further credit for the fact that it was the first conviction, and order that the Defendant's name be removed from the General Register for a period of 3 months.
  - (ii) In respect of charge (b) in the 1<sup>st</sup> Notice, we order that the Defendant's name be removed from the General Register for a period of 3 months, for the same reason set out in sub-paragraph (i) above.
  - (iii) In respect of the charge in the 2<sup>nd</sup> Notice, we order that the Defendant's name be removed from the General Register for a period of 6 months.

- (iv) The orders in sub-paragraphs (i) and (ii) above shall run concurrently, but consecutively to the order in sub-paragraph (iii) above. In other words, the total period of removal shall be 9 months.
  
- (v) We further order that the above removal orders take effect upon their publication in the Gazette. We make this order for the reason that we are satisfied that it is necessary for the protection of the public.

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