

# 香港醫務委員會

## The Medical Council of Hong Kong

---

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

Date of hearing: 25 October 2010

Defendant: Dr SIU Ting Wing (蕭定榮醫生)

1. The charges alleged against the Defendant, Dr SIU Ting Wing are that:

“He, being a registered medical practitioner:

(a) was convicted at the Eastern Magistrates’ Court on 4 May 2009 of an offence punishable with imprisonment, namely failing to keep register of dangerous drugs, contrary to Regulation 5(1)(a) and Regulation 5(7) of the Dangerous Drugs Regulations made under Dangerous Drugs Ordinance, Chapter 134, Laws of Hong Kong;

(b) are 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 for the Guidance of Registered Medical Practitioners issued by the Medical Council of Hong Kong.”

2. The Defendant is not present at the inquiry but is represented by counsel. Defence Counsel confirms that the Defendant will not be prejudiced by his absence.

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

3. On 18 July 2008, pharmacists of the Department of Health conducted an inspection to the Defendant’s clinic. He was the only registered medical practitioner practising at that clinic. The pharmacists demanded to see the dangerous drugs registers. The Defendant replied that he did not have any

dangerous drugs register because he had not obtained any dangerous drug. No dangerous drug register was found in the clinic.

4. It was subsequently discovered that the Defendant had in fact ordered various dangerous drugs from the suppliers. The Defendant had received the following quantities of dangerous drugs at his clinic within the 2 years immediately before 18 July 2008:-

|                                  |                 |
|----------------------------------|-----------------|
| Panbesy 15 mg (Phentermine 15mg) | 1,200 capsules  |
| Panbesy 30mg (Phentermine 30mg)  | 14,800 capsules |
| Dima 5 mg (Nitrazepam 5 mg)      | 5,000 tablets   |
| Kratium 5 mg (Diazepam 5mg)      | 4,000 tablets   |
| Kratium 10mg (Diazepam 10mg)     | 22,000 tablets  |
| Lorans 0.5mg (Lorazepam 0.5mg)   | 7,000 tablets   |

5. The Dangerous Drugs Regulations require that every medical practitioner shall keep a register of each dangerous drug he had obtained in accordance with the prescribed format. The register shall be preserved for a period of two years from the date of the last entry, and shall be kept at the premises to which it relates so as to be available for inspection by any officer authorized by the Director of Health at all times. Failure to comply with such requirement is a criminal offence punishable by a fine of \$450,000 and imprisonment for 3 years.
6. The Defendant was charged with the offence of failing to keep a register in accordance with the requirements with respect to each of the above-mentioned dangerous drugs. He pleaded not guilty and was convicted after trial on 4 May 2009.
7. Section 29 of the Code of Professional Conduct provides that a doctor who has been convicted in or outside Hong Kong of an offence punishable by imprisonment is required to report the conviction to the Medical Council 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.
8. The Defendant did not report his conviction to the Medical Council. The conviction was drawn to the attention of the Medical Council by the Department of Health. In April 2010 the Secretary of the Council wrote to the

Defendant asking, inter alia, about his failure to make the report. In May 2010, the Defendant's solicitors replied that the Defendant was not aware of section 29 of the Code.

9. All the above facts are admitted by the Defendant.
10. We are satisfied on the evidence and on the Defendant's admission that he has been convicted of the criminal offence as stated in charge (a).
11. As to charge (b), the Defendant admitted the allegation. Nevertheless, it remains the duty of this Council to decide whether the Defendant's conduct in failing to report the criminal conviction within the specified 28 days is conduct falling short of the standard expected amongst registered medical practitioners and therefore constitutes professional misconduct.
12. It is a general rule that ignorance of the law is no defence. The same principle applies as to ignorance of the provisions of the Code of Professional Conduct. Furthermore, it is the professional responsibility of every registered medical practitioner to acquaint himself with and to comply with all provisions of the Code.
13. The purpose of section 29 of the Code is to ensure that the Medical Council can timely consider whether disciplinary action should be taken in respect of a practitioner who has been convicted of a criminal offence punishable with imprisonment. This is necessary for protecting the public from doctors who are unfit or unsuitable to practise medicine. The reporting requirement is particularly significant in relation to convictions of offences relating to a doctor's medical practice.
14. The Defendant's conviction is directly relating to his medical practice. In fact, in the criminal court after conviction, the Defendant's then counsel mitigated on the ground that the Defendant would face additional punishment by the Medical Council in its disciplinary proceeding and urged the court to impose a lenient sentence. This clearly shows that the Defendant was aware of the potential consequence of the criminal conviction to his professional practice.
15. This is not a case of late reporting, but a case of non-reporting at all. If not for the fact that the Department of Health drawing the conviction to the attention

of the Medical Council, the matter could have completely escaped the necessary action by the Council to protect the public.

16. We are satisfied that the Defendant's conduct in not reporting the conviction has fallen below the standard expected amongst registered medical practitioners and therefore constitutes professional misconduct. We find him guilty of charge (b).
17. In summary, we find the Defendant guilty of both charges (a) and (b).

### Sentencing

18. The Defendant has 4 previous disciplinary convictions. The misconducts in the 4 previous cases were committed during the period 2003-2005, all pre-dating the present case. Although the previous cases were not exactly of the same nature as the present case, the Defendant has repeatedly conducted himself below the standard expected amongst registered medical practitioners.
19. Defence Counsel urges us to take into consideration that there were in existence the relevant registers which were not kept in the Defendant's clinic, and such registers were produced to the Department of Health subsequently. However, he accepts that the court in the criminal trial has made no finding at all whether such registers were true and accurate records of the dangerous drugs in question.
20. We note from the trial transcript that there were questionable features of the registers, such as dispensing medicine for a whole year or 1,440 tablets to a patient at one go. While such features were extremely unusual in a doctor's practice, it is not our remit in this inquiry to make a finding as to the truthfulness and accuracy of the registers.
21. It is for the Defence to satisfy us of the truthfulness and accuracy of the registers which he relies on as mitigation. It is not sufficient for the Defence to make a bare assertion of fact, in particular when the questionable features of the registers have been pointed out to him. The Defence has failed to satisfy us on this mitigating factor.
22. The only mitigation of weight is that the Defendant admitted the charges in the inquiry, thus saving time and showing his remorse. We shall give him credit in

sentencing, in accordance with the Council's published policy of giving credit for honest admission of facts which are true.

23. The present case involves a very large quantity of 54,000 capsules and tablets in total, all of which are drugs of potential abuse.
24. The Council has emphasized in many previous cases that it has all along taken a serious view on failing to keep a proper register of dangerous drugs. As the Court of Appeal said in the case of *Ng Mei Sin* [1995], any breach of the Dangerous Drugs Regulations must be treated seriously, as the Regulations seek to ensure that drugs legitimately supplied to doctors are fully and carefully controlled so that the risk of those drugs falling into the wrong hands is minimized.
25. The Court of Appeal in the case of *Lai Chung Lim* [1996] said that the dangerous drug register is a simple form which can be filled in as a clerical exercise whenever drugs are received or dispensed, and there is nothing complicated about it. A doctor exercising proper care would have no difficulty at all in complying with the requirements.
26. Having regard to the gravity of the case, and giving the Defendant credit for admitting the charges in the inquiry, we make the following orders:-
  - (a) In respect of charge (a), the Defendant's name be removed from the General Register for a period of 3 months.
  - (b) The orders of removal for 3 months and 10 months made by the Council on 16 April 2008 and 20 July 2008 respectively in 2 previous inquiries have not yet been implemented because they are still under appeal. The removal order in the present case shall be consecutive to those 2 removal orders.
  - (c) In respect of charge (b), the Defendant be reprimanded.

Prof. Grace Tang, SBS, JP  
Temporary Chairman, Medical Council