

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAM Shiu Kum (林兆鑫醫生) (Reg. no M01749)
Date of hearing: 13 July 2011

1. The charge alleged against the Defendant, Dr LAM Shiu Kum, is that:

“He, being a registered medical practitioner, was convicted at the District Court on 1 September 2009 of an offence punishable with imprisonment, namely, Misconduct in Public Office, contrary to Common Law and punishable under section 101I of the Criminal Procedure Ordinance, Chapter 221, Laws of Hong Kong.”

Facts of the case

2. The Defendant admits in this inquiry that he was convicted of the criminal offence in question in the District Court on 1 September 2009. The facts of the case are set out in the Summary of Facts for that offence which was admitted by the Defendant in the criminal trial.
3. At all material times, the Defendant was the Dean of the Faculty of Medicine of the University of Hong Kong (“HKU”) and also the Honorary Chief of Service of the Department of Medicine of Queen Mary Hospital (“QMH”).

Private patients

4. As a clinical teacher of HKU, he was permitted to provide medical consultation and treatment for private patients in QMH. The income generated from such private patients would be shared between QMH (25%) and HKU (75%). Bills should be issued by QMH to the patients. Clinical

teachers were not permitted to bill, or receive fees from, the patients directly. Subject to application by the teacher and approval of a Faculty Outside Practice Sub-committee, individual teachers might receive a portion of the income generated from private patients up to a maximum of 50%. The Defendant never made any such application.

5. All HKU employees were prohibited from using his position to benefit himself or his family. They were required to avoid engaging in situations which might lead to or involve a conflict of interest. They were also required to declare any potential or actual interest in any matter when discharging their duties and responsibilities, failure to do so in situations of apparent conflict of interest was treated as serious misconduct.
6. The Defendant set up a business by the name of Gastrointestinal Research (“GR”) in 1984. He was the sole proprietor of GR and the sole authorized signatory of GR’s bank account. He never declared his interest in GR to HKU.
7. Contrary to the rules governing practice on private patients, the Defendant issued demand notes bearing the logos of HKU and QMH to his private patients, asking them to pay the medical fees into the bank account of GR. The patients complied. This involved 20 payments from January 2003 to September 2006 by 12 patients, and a total payment of \$130,000. The Defendant also issued without authorization receipts bearing the logos of HKU and QMH to some of the patients.

Donations

8. As the Dean of the Faculty, the Defendant was also responsible for raising funds.
9. From June 2003 to April 2006, the Defendant asked one of his private patients to make donation in support of the research work of the Faculty and asked him to make the cheque payable to GR. The patient made a total donation of \$3.5

million on 6 occasions. All 6 cheques were deposited into the account of GR.

10. Two other private patients of the Defendant also intended to donate money to the Faculty. At the direction of the Defendant, they made the cheques payable to GR. A total of \$300,000 was donated by these two donors, and the cheques were deposited into the account of GR.

GR's funds

11. The Defendant never informed HKU and QMH of the income which he had received from his private patients and donations made to the Faculty. He did not account for such funds which were paid into GR's account.
12. From the account of GR, the Defendant made cash withdrawals in a total sum of \$788,760, and transferred a total sum of \$3,340,000 to his personal account. He also issued a cheque drawn on the GR account to his wife for a sum of \$20,000, and two cheques to an acquaintance of his for a total sum of \$302,400.

The secret revealed

13. A private patient received endoscopic procedure by the Defendant in July 2006, and paid the medical fee of \$9,500 to GR according to the demand note issued by the Defendant. A receipt was issued by the Defendant. However, he subsequently received a bill from the Hospital Authority for fees in connection with the procedure. He made enquiries with QMH, which then conducted an internal enquiry. As the payment could not be traced, QMH then alerted the Vice-Chancellor of HKU.
14. QMH also asked the Defendant for an explanation. This triggered a series of acts by the Defendant to cover up his secret dealings with the private patients. The Defendant contacted the patient telling him that there was an adjustment to the accounts. The Defendant asked the patient to treat the \$9,500 he had paid to GR as a donation to HKU, and to issue another cheque for \$10,000 to

HKU upon the Defendant reimbursing him in cash. The patient complied, and signed a letter prepared by the Defendant and addressed to the Defendant. The letter stated that the patient had not received any invoice from QMH or HKU and he had not made payment to HKU, QMH or the Defendant, and he would then donate \$10,000 to HKU.

15. On 8 January 2007, the Defendant sent the letter and the \$10,000 cheque to QMH, explaining that the case was his administrative error and the patient's misunderstanding, and the receipt was issued by the Defendant upon the patient's request for the patient's insurance claim.
16. On 10 January 2007, GR was dissolved. On 16 January 2007, GR's bank account was closed.
17. The matter was eventually reported to the Independent Commission Against Corruption, which arrested the Defendant on 29 March 2007.

Criminal conviction

18. On 1 September 2009, the Defendant pleaded guilty to an offence of "Misconduct in public office" and admitted the facts set out in the Summary of Facts in the District Court. He was convicted of the offence and sentenced to imprisonment for 25 months.
19. On the basis of the Defendant's admission and the evidence contained in the Secretary's Bundle, we are satisfied that the disciplinary charge has been proven.
20. The Defendant was charged with a total of 34 charges, i.e. 30 counts of "Fraud", 3 counts of "Theft" and 1 count of "Misconduct in public office". However, as a result of agreement with the prosecution, upon the Defendant pleading guilty to the charge of "Misconduct in public office" the other 33 charges were not proceed with and were left on the Court's file.

21. As the present disciplinary charge is only in relation to the conviction for the “Misconduct in public office” charge, we shall disregard the other charges of which the Defendant was not convicted.

Sentencing

22. The Defendant has a clear disciplinary record.
23. In accordance with our policy published in the ‘Practice Directions on Preliminary Investigation of Complaints’ and the ‘Practice Directions on Disciplinary Inquiries’, we give him credit for admitting the facts alleged in the disciplinary charge. Nevertheless, the evidence of the criminal conviction is overwhelming, and the credit to be given in such cases is necessarily less than the credit to be given in other cases.
24. Defence Counsel strongly emphasizes that the criminal charge of which the Defendant is convicted does not depend on dishonesty and monetary gain. We accept that, as a general statement, the offence of “Misconduct in public office” does not require the element of dishonesty or monetary gain. However, the present criminal charge specifically accused the Defendant of dishonest conduct in embezzling money belonging to HKU and QMH through abuse of his position in dealing with his private patients and donors. There is ample reference to the dishonest conduct in the Summary of Facts and the judgment of the District Court. We fail to see how Defence Counsel can say that the present criminal charge does not involve dishonesty. We reject that submission.
25. We bear in mind that the purpose of disciplinary proceedings against a doctor who has been convicted of a criminal offence by a court of law is not to punish him a second time for the same offence, but to protect the public who may come to him as patients and to maintain public confidence in the medical profession by upholding the high standards and good reputation of an honourable profession.

26. Defence Counsel urged upon us to consider the case only on the basis of the Defendant's medical competence. Medical competence is not the only consideration as to whether a person is fit to practise medicine. Integrity is an essential requirement of all doctors. A person of substandard integrity or unethical character cannot be a fit and proper person to practise, although he is competent in medical knowledge and skill. In this case, our concern is not about the Defendant's competence but about his integrity.
27. The Defence argued that the criminal offence was related only to the Defendant's role as an administrator and had nothing to do with his professional duties as a doctor. We disagree. The dishonest conduct arose from the Defendant's dealings with his private patients. The donors whose donations had been secretly embezzled by the Defendant were his private patients or family members of his private patients. As the Chief District Judge pointed out, the Defendant's conduct is a serious breach of trust owed to his patients, the Faculty and the Hospital Authority.
28. The dishonest conduct involved in the criminal offence was a well planned and carefully executed scheme, on many occasions over a long period of time. A huge amount of money was involved. We are also concerned that when the secret dealings began to come to light, the Defendant took more dishonest action to cover up the scheme. This all reflected upon his character. While we take note of the many favourable character references and his public service, we cannot disregard his dishonest dealings.
29. The Defendant explained that he devised the scheme for the purpose of maintaining flexibility in discharging his duties to HKU, and the embezzled money was used for the entertainment of academic visitors and financing his overseas visits. We are far from convinced that the large amount of money was used for this purpose alone. We share the view of the Chief District Judge that it was disappointing that no further explanation whatsoever is given.

30. While the Defendant pleaded guilty to the criminal charge and admitted the facts alleged in the disciplinary charge, we have reservation on whether he is genuinely remorseful. The Defendant persistently emphasized, both personally to the Preliminary Investigation Committee and through the Defence Counsel in this inquiry, that there was no dishonesty involved, suggesting that no moral turpitude was involved. Remorse can only come from insight, and it seems that the Defendant does not have insight in this respect.
31. We do not intend to deal with each point on mitigation separately. We accept the Defendant's contributions to medical research and in public service. However, that must be taken in the context of his duties in his employment with HKU. We wish to point out that the so-called "*de facto deregistration*" before the conclusion of this disciplinary inquiry is non-existent, as any doctor pending inquiry can continue to practise.
32. We are of the view that the gravity of the case warrants an order of unsuspended removal from the General Register for a period of 12 months. Giving credit for the mitigating factors, we order that the Defendant's name be removed from the General Register for a period of 9 months.
33. We have considered whether the order should be suspended. We do not consider that this is a suitable case for suspension of the order.

Other remarks

34. The Defendant's name is included in the Specialist Register under the specialty of 'Gastroenterology and Hepatology'. While it is for the Education and Accreditation Committee to consider whether action should be taken under section 20N of the Medical Registration Ordinance, we are of the tentative view that each of the following factors justifies removal from the Specialist Register:-

(a) upon implementation of the disciplinary order the Defendant will cease to be a registered medical practitioner and thus lose the prerequisite status for remaining on the Specialist Register;

(b) the Defendant's character has fallen below the standard required for remaining on the General Register logically is below the standard required for remaining on the Specialist Register.

35. We note that many character references in their reference letters said that they often had to bear the expenses for academic conferences personally. However, this can be no excuse for resorting to unlawful means of funding such academic activities. In fact, none of those persons who had to bear the expenses resorted to such unlawful means as the Defendant did.

Dr CHOI Kin
Temporary Chairman,
Medical Council