

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

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

Defendant: Dr YEUNG Clement Ka Chun (楊嘉俊醫生) (Reg. no M04650)  
Date of hearing: 18 October 2011

1. The charges alleged against the Defendant, Dr YEUNG Clement Ka Chun, are that:

“He, being a registered medical practitioner in Hong Kong:-

(a) was convicted in the United States of America on 30 August 2007 of the following offences which are punishable with imprisonment:-

(i) on or about 14 June 2002, in the District of Hawaii, he did knowingly and intentionally distribute and dispense outside the course of professional medical practice and not for a legitimate medical purpose approximately 1400 milligrams of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1);

(ii) on or about 21 June 2002, in the District of Hawaii, he did knowingly and intentionally distribute and dispense outside the course of professional medical practice and not for a legitimate medical purpose approximately 800 milligrams of Oxycodone, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1);

(b) failed to report to the Medical Council of Hong Kong within 28 days the decision of the Medical Board of California of the United States of America on 8 January 2009 to suspend his California medical licence, 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;

(c) by way of a Settlement Agreement dated 3 June 2008 with the Board of Medical Examiners, Department of Commerce and Consumer Affairs, State of Hawaii, the United States of America, had his licence revoked and was refrained from applying for a new licence until the expiration of at least 5 years after the effective date of the revocation i.e. 31 January 2008;

(d) failed to report to the Medical Council of Hong Kong the convictions mentioned in paragraph (a) above within 28 days of the convictions, 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. This Council has jurisdiction to inquire into only those disciplinary offences set out in section 21(1) of the Medical Registration Ordinance. Charge (c) is in respect of a settlement agreement between the Defendant and the Board of Medical Examiners of Hawaii. It is not one of the disciplinary offences set out in section 21(1) of the Medical Registration Ordinance and is unknown to law. We have no jurisdiction to inquire into it. As we have dismissed the charge, we shall now deal with only charges (a), (b) and (d).

### **Facts of the case**

3. The Defendant has been a registered medical practitioner in Hong Kong from 20 April 1982. He was also a registered medical practitioner in the State of Hawaii from 1980 to 2008, and in the State of California from 1980 to 2009.
4. On 14 June 2002 at approximately 7:15 p.m. in Hawaii in the parking lot of a bakery, the Defendant met with an undercover agent of the Drug Enforcement Administration of the United States of America. The undercover agent had met with the Defendant on prior occasions, and the Defendant believed him to be a patient. The Defendant drove to the rendezvous in his vehicle, and met with the undercover agent for approximately five minutes in his vehicle. He

then prescribed 1,400 milligrams of Oxycodone (i.e. seventy 20 milligram tablets) to the undercover agent. After the prescription was written, the Defendant requested payment of US\$350 and the undercover agent paid him US\$400. The Defendant did not issue any receipt for the payment.

5. On 21 June 2002 at approximately 6:47 p.m. in Hawaii, the Defendant met with the same undercover agent in the parking garage of a hospital. He met with the undercover agent next to his vehicle in the garage. After meeting for approximately ten minutes, he prescribed 800 milligrams of Oxycodone (i.e. forty 20 milligram tablets) to the undercover agent. After the prescription was written, the Defendant and the undercover agent agreed on a payment of US\$450 on the basis of a “house call”. The undercover agent paid him US\$450. The Defendant did not issue any receipt for the payment.
6. Oxycodone is a controlled substance under Schedule II of the Federal Controlled Substances Act, Title 21 of the United States Code. Under section 841(a)(1) of the Federal Controlled Substances Act, it is an offence (being a felony) for any person to knowingly or intentionally distribute or dispense a controlled substance unless authorized under the Act. The offence is punishable with imprisonment for not more than 20 years, and if death or serious bodily injury resulted from use of the substance the sentence shall be imprisonment for more than 20 years but not more than life.
7. On 29 March 2007, the Defendant was indicted for 49 counts of offences. Thirty counts (i.e. Counts 1 to 30) were for the offence of “knowingly and intentionally distribute and dispense a Schedule II controlled substance outside the course of professional medical practice and not for a legitimate medical purpose” in violation of section 841(a)(1) of the Federal Controlled Substances Act. The 30 counts were for offences from November 2001 to July 2002, all of which were in respect of the controlled substance Oxycodone, except Count 15 which in respect of the controlled substance Fentanyl. The remaining 19 counts (i.e. Counts 31 to 49) were for the offence of defrauding the Hawaii State Medicaid program by means of materially false and

fraudulent health insurance claims on 19 occasions from February to July 2002.

8. Pursuant to a plea agreement, the Defendant pleaded guilty to 2 counts of the Indictment (i.e. Counts 22 and 23) and the prosecution moved to dismiss the remaining counts of the Indictment. On 30 August 2007, the Defendant was convicted by the United States District Court in the District of Hawaii of Counts 22 and 23 of the Indictment, and the remaining counts of the Indictment were dismissed on the motion of the prosecution. He was sentenced to imprisonment for one year and one day and a fine of US\$10,000. He was removed from the United States of America after release from imprisonment.
9. On 18 July 2008, the Medical Board of Hawaii for reason of the Defendant's convictions ordered that the Defendant's Hawaii licence to practise medicine be revoked. The Defendant was prohibited from applying for a new licence until the expiry of 5 years after the revocation.
10. On 8 January 2009, the Medical Board of California for reason of the revocation of the Defendant's Hawaii licence ordered that the Defendant's California medical licence be suspended. On 3 November 2009, the Medical Board of California ordered the Defendant to surrender his California medical licence pursuant to a Stipulation for Surrender of Licence. The order took effect on 10 November 2009, upon which the Defendant lost all rights and privileges to practise as a physician and surgeon in the State of California. The Defendant was prohibited from reinstatement as a physician and surgeon for a period of 3 years from the date of surrender of the licence.
11. On 21 April 2009, the Defendant reported to this Council: (i) the revocation of his Hawaii licence by the Medical Board of Hawaii; and (ii) the finding by the Medical Board of California that he failed to report within 30 days the bringing of an indictment and the conviction.

12. The Defendant never reported to this Council: (i) the criminal convictions by the United States District Court in the District of Hawaii; (ii) the order to suspend his California medical licence by the Medical Board of California; and (iii) the order to surrender his California medical licence by the Medical Board of California.

### **Findings of the Council**

13. All the facts are not disputed by the Defence.
14. On the basis of the undisputed facts, we find that the Defendant was convicted of the 2 criminal offences set out in Charge (a).
15. We then turn to Charges (b) and (d). Under section 29 of the Code of Professional Conduct, a doctor who has been convicted in or outside Hong Kong of an offence punishable by imprisonment or has been the subject of adverse findings in disciplinary proceedings by other professional regulatory bodies is required to report the matter to this Council within 28 days from the conviction or the adverse disciplinary finding. Failure to report within the specified time will in itself be ground for disciplinary action. This provision has been in effect long before the January 2009 Code of Professional Conduct was issued.
16. We are satisfied that the order of the Medical Board of California for suspension of the Defendant's California medical licence is an adverse disciplinary finding by a professional regulatory body, and the Defendant has a duty to report such finding to this Council. We are satisfied that the Defendant's conduct in failing to report the adverse disciplinary finding has fallen below the standard expected amongst registered medical practitioners. We find him guilty of professional misconduct as charged in Charge (b).
17. In respect of Charge (d), we are satisfied that the Defendant's conduct in failing to report the criminal convictions has fallen below the standard

expected amongst registered medical practitioners. We find him guilty of professional misconduct as charged in Charge (d).

### **Sentencing**

18. The Defendant has a clear record.
19. In respect of Charge (d), we have been shown evidence in mitigation that in fact the Defendant had reported his criminal convictions to this Council in December 2007 when applying for the practising certificate for the year 2008. In the circumstances, we have made a wrong factual finding that the Defendant never reported the criminal convictions by the United States District Court in the District of Hawaii. In this respect, our earlier finding shall stand corrected. The report was in fact made about two and a half months later than the specified time limit. Nevertheless, we maintain our finding that such late report constituted professional misconduct and our finding of guilt in Charge (d).
20. In this respect, we wish to remind the Secretary to bring to the Council's notice the true position in future cases of failure to report criminal convictions within the specified 28 days time limit.
21. The Defendant has been fully cooperative during the inquiry and admitted all the facts. We shall give him credit in accordance with our published policy as set out in the Practice Directions on Disciplinary Inquiries. However, there is indisputable and overwhelming evidence for the charges. The credit given in such cases necessarily will be lesser than in cases where the evidence is less overwhelming. Other than this, we see no mitigation of weight.
22. We bear in mind that the purpose of disciplinary proceedings in respect of criminal convictions is not to punish the Defendant a second time, but to protect the public and to maintain public confidence in the profession by

upholding the reputation of the profession. We must have regard to this purpose in sentencing.

23. We bear in mind that the Defendant was convicted on Counts 22 and 23 only, and all the other counts have been dismissed. We shall ignore all the dismissed counts.
24. The Defence mitigated on the basis that the Defendant was not a drug dealer prescribing controlled drugs indiscriminately, but was in fact prescribing the drugs to his patient who had pretended to be suffering from pain and in need of medication. In a letter dated 17 October 2011 to this Council, the Defendant said that *“the convictions in Hawaii... was a result of... failure in the examination to realize that ...the undercover DEA agent was not a real patient truly in need of medication”* and that he *“was surely guilty of misconduct of a nature of not exercising adequate care with the prescription of opioids, but not a misconduct of drug dealing or unethical behavior”*.
25. We cannot accept such mitigation, having regard to the fact that he pleaded guilty in a court of law to two counts of *“knowingly and intentionally distribute and dispense outside the course of professional medical practice and not for a legitimate medical purpose...a...controlled substance”*. The guilty pleas were entered by the Defendant voluntarily after legal advice. The Defendant categorically declared in the Memorandum of Plea Agreement that he entered the pleas because he was *“in fact guilty of distributing and dispensing Oxycodone outside the course of professional medical practice and not for a legitimate medical purpose”*. The same was reconfirmed twice in his settlement agreements with the Medical Board of Hawaii and the Medical Board of California. We must respect the clear terms of the conviction. It is not open for him to challenge the conviction through the backdoor.
26. Oxycodone is a dangerous drug prone to addiction and abuse. There was no legitimate reason for the Defendant’s prescription of the drug at all, having regard to the manner of the prescription (i.e. in a parking lot and a garage, without record), the quantity involved (i.e. 110 tablets of 20 milligrams each

within 7 days), outside the course of medical practice and not for a legitimate purpose.

27. We note that the offences took place in Hawaii. However, we must have regard to the fact that there is similar control of dangerous drugs in Hong Kong. In the United States of America, doctors are given the authority to prescribe but not to dispense dangerous drugs. In Hong Kong, doctors are given the legal authority to both prescribe and dispense dangerous drugs. There is an even higher potential for abuse of the authority.
28. Having regard to the gravity of charge (a), we consider that an order of removal from the General Register for a period of 5 years is appropriate. Giving him credit for the mitigating factors of clear record and cooperation in the inquiry, we order that his name be removed from the General Register for a period of 4 years.
29. In respect of Charges (b) and (d), we recognize that the delay in reporting was not excessive. While we would usually order reprimand in cases of longer delay, we order that a warning letter be served on the Defendant in respect of Charges (b) and (d).
30. We have considered whether the operation of the orders could be suspended. We do not consider suspension is appropriate in this case.
31. The orders in respect of Charges (a), (b) and (d) shall be published in the Gazette.

**Other remarks**

32. While it is for the Council in the future to consider the Defendant's application for restoration to the General Register if and when it is made, we recommend that if the application is to be approved the following conditions be imposed for a period to be decided by the Council:-



(a) The Defendant shall not prescribe dangerous drugs. If prescription of dangerous drugs is required for treatment of the patient's ailment, he should refer the patient to other doctors for care.

(b) The Defendant shall not possess or supply dangerous drugs controlled under the Dangerous Drugs Ordinance.

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