

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAU Kwok Lam Alan (劉國霖醫生) (reg. no M01783)

Date of hearing: 11 January 2012

1. The charges alleged against the Defendant, Dr LAU Kwok Lam Alan, are that:

“He, being a registered medical practitioner:

(a) was convicted at the Eastern Magistrates’ Courts on 27 January 2010 of two offences punishable with imprisonment, namely :

(i) Permitting the use of marked oil as a fuel in a pleasure vessel, contrary to Regulation 5B(1)(a) as read with Regulation 13(2) of the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations, Cap. 109C, Laws of Hong Kong ; and

(ii) Possessing in the waters of Hong Kong, a pleasure vessel without the statement “NO KEROSENE OR MARKED OIL IS TO BE PLACED IN THIS FUEL TANK” conspicuously marked immediately next to each inlet to the fuel tank of that vessel, contrary to Regulation 12A as read with Regulation 13(1) of the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations, Cap. 109C, Laws of Hong Kong; and

(b) has been 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” of the Medical Council published in January 2009.”

Facts of the case

2. The case arose from the Defendant's criminal conviction for two offences under the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations, Cap. 109C, Laws of Hong Kong.
3. The Defendant was the owner of a Class IV pleasure vessel with two diesel propelled inboard engines. By virtue of Cap. 109C, the statement "NO KEROSENE OR MARKED OIL IS TO BE PLACED IN THIS FUEL TANK" is required to be marked conspicuously immediately next to each inlet to the fuel tanks, and it is an offence punishable with imprisonment to possess or use in the waters of Hong Kong the vessel without the prescribed statement. It is also an offence punishable with imprisonment to use or permit the use of marked oil as a fuel in the vessel. In this context, marked oil refers to light diesel oil for industrial use commonly known as "red oil".
4. On 22 November 2009, the Defendant instructed his staff to fill up the fuel tanks of the vessel with marked oil. As a result, 1,600 litres of marked oil was placed in the fuel tanks.
5. When Customs officers boarded the vessel, the Defendant was on board the vessel and the marked oil was found inside the fuel tanks. The Customs officers also found that the inlets to the fuel tanks were not marked with the prescribed statement "NO KEROSENE OR MARKED OIL IS TO BE PLACED IN THIS FUEL TANK" as required by the legislation.
6. Under caution, the Defendant admitted that he knew that marked oil was not allowed to be used within Hong Kong and he could only use duty-paid white diesel, and he told his staff to fill the fuel tanks with marked oil because he had to use a large quantity of fuel. He also admitted that the inlets to the fuel tanks were not marked with the prescribed statement, despite the fact that he was a committee member of the Hong Kong Yacht Club and sometimes had meetings with officers of the Marine Department.
7. The Defendant was charged with the two criminal offences set out in Charge (a)(i) and (ii) above. He pleaded guilty to the two offences in the Eastern Magistrates' Courts and admitted the facts set out in the Statement of Facts on

27 January 2010. He was duly convicted of the two offences on the basis of his plea and admission of the facts, and was fined a total of \$8,500.

8. Under section 29.1 of the Code of Professional Conduct (January 2009 version), the Defendant was required to report his conviction to the Council within 28 days from the conviction. Section 29.1 of the Code also warned that failure to report within the prescribed time will in itself be ground for disciplinary action.
9. As the conviction was on 27 January 2010, he was required to report the conviction on or before 24 February 2010. However, he reported the conviction by a letter dated 25 February 2010.

Findings of the Council

10. There is clear evidence of the criminal conviction on 27 January 2010 for the two offences in question, in the transcript of the criminal proceeding and the certificate of trial. The Defendant also admits that he has been convicted of the two offences. We find that Charge (a) in this disciplinary inquiry has been proven.
11. As to Charge (b), the Defence admitted that the conviction was reported to the Council one day late, but submitted that it should not constitute professional misconduct.
12. Professional misconduct is defined by the Court of Appeal as conduct falling short of the standard expected amongst registered medical practitioners. As doctors are expected to comply with the provisions of the Code of Professional Conduct, failure to comply with the provisions is short of the standard expected, irrespective of how much later than the prescribed time the conviction was reported. Section 29.1 of the Code also warned that failure to report within the prescribed time will in itself be ground for disciplinary action.
13. We are satisfied that the Defendant's conduct constitutes professional misconduct. We find him guilty of Charge (b).

Sentencing

14. The Defendant has a clear record.
15. We shall also give credit to the Defendant for his cooperation both during preliminary investigation and in this inquiry. However, the extent of credit must be commensurate with the fact that the criminal conviction is indisputable in view of the clear evidence. The same applies to Charge (b), where the date of report to the Council cannot be disputed.
16. A large quantity of marked oil is involved. However, the amount that would have been used within Hong Kong would be only for the few miles before he would have left Hong Kong waters. Once beyond Hong Kong waters, he would not have been prohibited from using marked oil as fuel.
17. Given that he knew that he was not allowed to use marked oil in Hong Kong, there was some degree of dishonesty involved in the criminal offence of using marked oil as a fuel in Hong Kong. However, he has shown full remorse and thus the likelihood of re-offending is low. We also take into consideration the fact that the offence was not connected with patient care. We believe that he has learned a hard lesson from both the criminal conviction and this inquiry.
18. Having regard to the gravity of the disciplinary offences and the mitigating factors, we make the following orders:-
 - (i) in respect of Charge (a), the Defendant be reprimanded;
 - (ii) in respect of Charge (b), a warning letter be served on the Defendant;
 - (iii) the order in respect of Charge (a) shall be published in the Gazette, but the order in respect of Charge (b) shall not be published in the Gazette.

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