

DENTISTS REGISTRATION ORDINANCE (Chapter 156)

ORDER MADE BY THE DENTAL COUNCIL OF HONG KONG

It is hereby notified that an inquiry was held before the Dental Council of Hong Kong ('the Council') on 16 May 2013, 22 May 2013 and 6 June 2013 in accordance with section 18 of the Dentists Registration Ordinance, Chapter 156 of the Laws of Hong Kong in respect of the following charges against each of Dr. SIN Chung-yin, Ronald (Registration No. D02907), Dr. CHU Kai-yu (Registration No. D03017), Dr. CHOW Kar-wah (Registration No. D03013) and Dr. SO Wing-tong, Jacky (Registration No. D03187):—

'He, being a registered dentist, during the period from 17 July 2008 to 16 April 2010 -,

- (i) and being a director of Health & Care Dental Clinic Limited (恒健牙科醫務所有限公司), employed Mr. Jeremy TUNG (董敬堯) ('Mr. Tung') to perform dental service when he was no longer a registered dentist after his name had been removed from the General Register on 17 July 2008; and/or
- (ii) failed to take adequate steps to ensure that there was no unregistered person practising dentistry in the premises in which he practised dentistry;

and that in relation to the facts alleged he has been guilty of unprofessional conduct.'

At the inquiry, after the Secretary's case had been closed, a submission of 'no case to answer' on Charge (ii) in respect of 3 dentists, (i.e. Dr. SIN, Dr. CHOW and Dr. SO) was made. The Council upheld the submission and held that there was no case for the above 3 dentists to answer on Charge (ii). The Council therefore proceeded with Charge (i) against all 4 dentists and Charge (ii) against Dr. CHU only.

The case involved the illegal practice of dentistry by an unregistered person, Mr. Jeremy TUNG who was originally a registered dentist. He practised under the employment of a dental company since August 2005. Mr. TUNG applied for the practising certificate in 2005, 2006 and 2007. However, he did not do so in 2008. On 17 July 2008, he was removed from the General Register for the reason that he failed to obtain the practising certificate. Upon removal from the General Register, he ceased to be a registered dentist. However, he continued to practise dentistry illegally under the employment of the dental company until 16 April 2010. All 4 dentists were directors of the dental company during the period from 17 July 2008 to 16 April 2010. Dr. CHU also practised dentistry in the same clinic in which Mr. TUNG practised dentistry illegally after he had ceased to be a registered dentist.

The Council made the following findings:—

*Charge (i)*

The Council was satisfied that each of the 4 dentists had failed in his duty to ensure that all persons performing dental operations in the dental company were registered dentists. By employing Mr. TUNG to perform dental operations when he was not a registered dentist, they had permitted an unregistered person to practise dentistry illegally, in premises under the control of the company. Such conduct would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency. The Council found each of the 4 dentists guilty of Charge (i).

*Charge (ii)*

The Council was satisfied that Dr. CHU had failed his professional duty to ensure that all persons practising dentistry in the same premises with him are registered dentists. Such conduct would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency, thus constituting unprofessional conduct. The Council found him guilty of Charge (ii).

Having regard to the gravity of the case and the mitigating factors, the Council made the following orders:—

- (a) In respect of Charge (i), the name of Dr. SIN be removed from the General Register for a period of 3 months, and the names of the other 3 dentists (i.e. Dr. CHOW, Dr. SO and Dr. CHU) be removed from the General Register for a period of 2 months.

- (b) In respect of Charge (ii), the name of Dr. CHU be removed from the General Register for a period of 1 month. Given that the matter arose from the same incident in Charge (i), the removal period shall run concurrently with the order in Charge (i).

The 4 dentists subsequently appealed against Council's orders to the Court of Appeal ('CA'). The case was heard on 11 April 2014 and the CA dismissed the appeal on the same day. The 4 dentists then applied for leave to appeal to the Court of Final Appeal ('CFA') against the decision of the CA.

The Appeal Committee of the CFA granted leave to appeal in respect of the following questions of law:—

'In disciplinary proceedings charging registered dentists who are directors of a dental company for unprofessional conduct by reason of that company having breached its statutory duty under the Dentists' Registration Ordinance (Chapter 156) section 12 by employing an unregistered person to perform dental services:—

- (i) Was the Council entitled to find unprofessional conduct is made out even though that unregistered person had previously been duly registered and his removal from the General Register was unknown to the applicants and unknown to the dental company over the relevant period? ('Question 1')
- (ii) Does the answer to the foregoing Question depend on whether such absence of knowledge is properly characterised as negligent or as involving negligence rising 'to the level of an elemental or grievous failure'? ('Question 2')
- (iii) Was the Court of Appeal right to hold that directors of dental companies have a professional duty to ensure that only registered dentists are employed by the company, to verify the registered status of employed dentists in compiling the annual return and to confirm the accuracy of the annual return; and that inserting the relevant person's name in the annual return required to be filed by DRO section 12(3) amounted to a warranty that he was a registered dentist? ('Question 3')

At the hearing before the CFA, the Council conceded that the appellants' convictions could not stand because of procedural unfairness. The Council acknowledged that the appellants did not know about Mr. TUNG's lack of registration but submitted that the convictions could nonetheless be sustained on the basis that such lack of knowledge was due to 'negligence to a level of elemental or grievous failure' on the appellants' part. The Council invited the CFA, after answering the Questions 1 to 3 in order to provide authoritative guidance to the Council in this and future cases, to remit the matter back to the Council for fresh consideration and with such further amendment to the charges with leave of the CFA if thought fit.

The CFA handed down the judgment on 4 November 2016. The CFA's answers to Questions 1 to 3 were all 'No'. The CFA allowed the appellants' appeal and refused to remit the matter back to the Council with an order nisi that the Council paid the 4 dentists their costs before the CFA and below, including the costs of the disciplinary inquiry.

In accordance with section 18(5) of the Dentists Registration Ordinance, the order of the Council, as varied on appeal, shall be published in the Government of Hong Kong Special Administrative Region Gazette. The full judgment of the Council is published in the official website of the Dental Council (<http://www.dchk.org.hk>).

*LEE Kin-man Chairman, Dental Council of Hong Kong*