

MEDICAL REGISTRATION ORDINANCE (Chapter 161)

ORDER MADE BY THE MEDICAL COUNCIL OF HONG KONG

DR SHAM MAN WAI (REGISTRATION NO.: M04748)

It is hereby notified that after due inquiry held on 18 October 2017 in accordance with section 21 of the Medical Registration Ordinance, Chapter 161 of the Laws of Hong Kong, the Medical Council of Hong Kong found Dr SHAM Man Wai (Registration No.: M04748) guilty of the following disciplinary offences:—

‘That he, being a registered medical practitioner:—

- (a) was convicted at the Fanling Magistrates’ Courts on 17 June 2013 of fraud, which is an offence punishable with imprisonment, contrary to section 16A(1) of the Theft Ordinance, Chapter 210, Laws of Hong Kong; and
- (b) was convicted at the Fanling Magistrates’ Courts on 17 June 2013 of obtaining access to a computer with dishonest intent, which is an offence punishable with imprisonment, contrary to section 161(1)(b) of the Crimes Ordinance, Chapter 200, Laws of Hong Kong.’

Dr SHAM was at all material times a registered medical practitioner. His name has been included in the General Register from 19 July 1982 to present and his name has never been included in the Specialist Register.

On 17 June 2013, Dr SHAM was convicted after trial by a Magistrate sitting at the Fanling Magistrates’ Courts of the following offences:—

- (a) 9 counts of fraud, which is an offence punishable with imprisonment, contrary to section 16A(1) of the Theft Ordinance, Chapter 210, Laws of Hong Kong. The Defendant was sentenced to 4 months of imprisonment for each count to be served concurrently;
- (b) 12 counts of obtaining access to a computer with dishonest intent, which is an offence punishable with imprisonment, contrary to section 161(1)(b) of the Crimes Ordinance, Chapter 200, Laws of Hong Kong. The Defendant was sentenced to 6 weeks of imprisonment for each count to be served concurrently; and
- (c) one count of theft, which is an offence punishable with imprisonment, contrary to section 9 of the Thefts Ordinance, Chapter 210, Laws of Hong Kong. The Defendant was sentenced to 6 months imprisonment.

Dr SHAM subsequently appealed against the said convictions. On 15 April 2014, his appeal to the Court of First Instance was partially allowed by the Honourable Madam Justice Toh. Of the convictions for 9 counts of ‘Fraud’, 2 counts were quashed. Of the convictions for 12 counts of ‘Obtaining access to a computer with dishonest intent’, 10 counts were quashed. So was the conviction of ‘Theft’.

Convictions for the rest of the charges were upheld by the Court on appeal. According to the Statement of Agreed Facts signed by the Legal Officer and the Legal Representative for Dr SHAM, particulars of those charges are as follows:—

Charge 1

Sham Man Wai, on or about the 4th day of November 2003, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Atenolol, Calamine, Chlortetra Cycline HCL, Chlorpheni Ramine Maleate, Drixoral S.R. and Famotidine, valued at \$49.58 in total) stated in a prescription form were to be used by Chan Kwai Fuk, and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

Charge 2

Sham Man Wai, on or about the 20th day of October 2005, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Allopurinol, Cocillana Compound, Diclofenac Sodium, Famotidine, Fluvastatin Sodium and Nifedipine, valued at \$182.70 in total) stated in a prescription form were to be used by Chan Kwai Fuk, and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority

to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

Charge 3

Sham Man Wai, on or about the 3rd day of October 2006, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Ammonia and Ipecacuanha, Budesonide Aqueous, Chlorphenira Mine Maleate, Cocillana Compound, Domperidone, Famotidine, Gastrocaine and Salbutamol Sulphate, valued at \$396.91 in total) stated in a prescription form were to be used by Chan Kwai Fuk, and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

Charge 4

Sham Man Wai, on or about the 10th day of August 2007, in Hong Kong, by deceit, namely by falsely representing that the said Sham Man Wai had carried out medical consultation for Lui Ka Keung and the medicines (namely, Atenolol, Betamethasone (Valerate), Cocillana Compound, Famotidine and Nifedipine, valued at \$49.45 in total) stated in a prescription form were to be used by the said Lui Ka Keung, and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

Charge 5

Sham Man Wai, on or about the 22nd day of January 2008, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Ammonia and Ipecacuanha, Chlorphenira Mine Maleate, Cocillana Compound and Dequalinium Chloride, valued at \$96.43 in total) stated in a prescription form were to be used by Chan Kwai Fuk, and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

Charge 6

Sham Man Wai, on or about the 9th day of February 2010, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Ammonia and Liquorice, Calamine, Famotidine, Gliclazide, Metformin HCL, Prochlorperazine Maleate, Rosiglitazone Maleate and Simvastatin, valued at \$1,264.61 in total) stated in a prescription form were to be used by Yiu Wai Tat, and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

Charge 8

Sham Man Wai, on or about the 22nd day of June 2010, in Hong Kong, by deceit, namely by falsely representing that the medicines (namely, Amlodipine Besylate, Gliclazide, Indapamide, Metformin HCL, Rosiglitazone Maleate and Simvastatin, valued at \$1,237.98 in total) stated in a prescription form were to be used by Yiu Wai Tat, and with intent to defraud, induced the pharmacy of Fanling Family Medicine Centre of the Hospital Authority to commit an act, namely, dispense the said medicines, which resulted in benefit to the said Sham Man Wai or prejudice or a substantial risk of prejudice to the Hospital Authority.

Charge 10

Sham Man Wai, on the 4th day of October 2006, in Hong Kong, obtained access to a computer, namely the Clinical Management System of the Hospital Authority, with a dishonest intent to deceive the Hospital Authority that CHAN Kwai Fuk made a medical appointment.

Charge 11

Sham Man Wai, on the 22nd day of January 2008, in Hong Kong, obtained access to a computer, namely the Clinical Management System of the Hospital Authority, with a dishonest intent to deceive the Hospital Authority that CHAN Kwai Fuk made a medical appointment.

Briefly stated, Dr SHAM, who was one of the senior medical officers working at Fanling Family Medicine Centre, was found to have kept inside his consultation room a carton box containing medicines, which ought to have been dispensed to patients. Subsequent investigation by his superior officers then revealed further evidence that eventually led to the successful prosecution of the aforesaid charges.

Section 21(3) of the Medical Registration Ordinance expressly provides that '*Nothing in this section shall be deemed to require the Council to inquire into the question whether the registered medical practitioner was properly convicted but the Council may consider any record of the case in which such conviction was recorded and any other evidence which may be available and is relevant as showing the nature and gravity of the offence.*' The Medical Council was therefore entitled to take the aforesaid convictions as conclusively proven against Dr SHAM and found guilty of the disciplinary offences as charged.

In the view of the Medical Council, it is essential to maintain amongst members of the public a well-founded confidence that any registered medical practitioner whom they consulted will be a person of unquestionable integrity, probity and trustworthiness. Any person who lacks these essential attributes can hardly be a fit and proper person to practise medicine.

It is clearly stated in the Code of Professional Conduct that a particularly serious view will likely be taken in respect of offences involving dishonesty. This was a case involving fraud and obtaining access to the Hospital Authority's computer with dishonest intent.

Through his counsel Dr SHAM told the Medical Council that he kept the medicines involved in Charges 1 to 6 and 8 on behalf of his patients so that they would not have to wait for so long for dispensation. This was like 'running a mini dispensary'. Whilst the Medical Council accepted that there was no evidence to show that Dr SHAM kept those medicines for the purpose of resale, but whatever the intention of Dr SHAM might be, it remained a clear case of dishonesty and breach of trust. The Medical Council was particularly concerned to hear that Dr SHAM also gave out unused medicines returned from patients to other patients. In the Medical Council's view, the lack of quality assurance of such unused medicines should not be under-estimated.

Whilst the Medical Council accepted that Dr SHAM committed Charges 10 and 11 not for personal gain but in effect this was tantamount to helping his acquaintance to jump the queue for public medical service. However, the Medical Council accepted that Dr SHAM had learnt his lesson and the chances of his committing the same or similar disciplinary offences in the future would be low.

Having considered the nature and gravity of this case and Dr SHAM's plea of mitigation through his legal representative, the Council made a global order in respect of both disciplinary offences that Dr SHAM's name be removed from the General Register for 3 months and the removal order be suspended for a period of 12 months.

The orders are published in the *Gazette* in accordance with section 21(5) of the Medical Registration Ordinance. The full decision of the Medical Council is published in the official website of the Medical Council of Hong Kong (<http://www.mchk.org.hk>).

LAU Wan-ye, Joseph *Chairman, The Medical Council of Hong Kong*