



香港牙醫管理委員會
The Dental Council of Hong Kong

Disciplinary Inquiry under s.18 of DRO

Defendant: Dr JAIN Sandeep (Reg. No. D03389)

Date of hearing: 22 May 2023

Present at the hearing

Council Members: Dr LEE Kin-man, JP (Chairman)
Dr LEUNG Kwok-ling, Ares
Dr WAI Tak-shun, Dustin
Dr TSANG Hin-kei, Century

Legal Adviser: Mr. Stanley NG

Legal representative for the Defendant: Mr Chris HOWSE, Messrs Howse Williams,
Solicitors

Legal Officer representing the Secretary: Miss Sanyi SHUM, Senior Government Counsel

The Charge

1. The charge against the Defendant, Dr JAIN Sandeep, is as follows:-

“On 20 May 2021 at the Eastern Magistrates’ Courts, you being a registered dentist, were convicted of the offence of “possessing irradiating apparatus without licence”, contrary to sections 7(1)(c), 7(2), 22(1) and 23 of the Radiation Ordinance, Cap. 303, Laws of Hong Kong, which is an offence punishable with imprisonment.”

Burden and Standard of Proof

2. The Council bears in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove his innocence. The Council also bears in mind that the standard of proof for disciplinary proceedings is the preponderance of probability. However, the more serious the act or omission alleged, the more inherently improbable must it be

regarded. Therefore, the more inherently improbable it is regarded, the more compelling the evidence is required to prove it on the balance of probabilities.

Facts of the case

3. The name of the Defendant has been included in the General Register (“GR”) since 4 January 2002. His name has never been included in the Specialist Register.
4. In brief, there was an irradiating apparatus, namely Sirona Orthophos XG 5 DS Panoramic Dental X-Ray System (“the X-Ray Machine”) at the dental clinic situated at Room 1914, Melbourne Plaza, 33 Queen’s Road Central, Hong Kong (“the Clinic”). The licensee of the X-Ray Machine was Diestel & Partners (Dental Surgeons) Limited (“the Company”), of which the Defendant was the director. On 21 April 2020, a Dr San, a dental surgeon at the Clinic took an x-ray of a patient using the X-Ray Machine, and by that material time, the Company only had a possess licence, not a functional licence. A possess licence is a kind of licence attaching to the X-ray machine itself, whereas a functional licence permits the x-ray machine to be used at a specific location where the necessary location has been properly shielded and so forth.
5. The Defendant was summoned for the offence of “Possessing irradiating apparatus without licence” contrary to sections 7(1)(c), 7(2), 22(1) and 23 of Radiation Ordinance, Cap. 303 (“the Offence”).
6. On 20 May 2021, the Defendant was convicted after trial in Case No. ESS 26649/2020 of the Offence and sentenced to a fine of HK\$4,000.
7. By a letter dated 8 June 2021, the Defendant reported to the Dental Council that he was found guilty of the Offence, which is an offence punishable with imprisonment. The Defendant also informed the Dental Council that he had filed an appeal against his conviction on 3 June 2021.
8. By another letter dated 15 February 2022, the Defendant notified the Dental Council that his appeal against the conviction failed, and his conviction had been upheld.

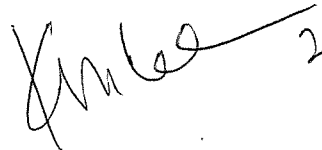
Findings of the Council

9. There is no dispute that the Offence is punishable with imprisonment. By virtue of section 18(1)(a) of the Dentists Registration Ordinance, Cap. 156 (“DRO”), our disciplinary powers against the Defendant are engaged.
10. Section 18(3) of the DRO expressly provides that:

“Nothing in this section shall be deemed to require the Council to inquire into the question whether the registered dentist 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.”
11. We are therefore entitled to take the aforesaid conviction as proven against the Defendant.
12. Accordingly, we find the Defendant guilty of the disciplinary charge.

Sentencing

13. The Defendant has no previous disciplinary record.
14. We shall give the Defendant credit for his cooperation in that he did not contest the disciplinary charge. However, given that there is hardly any room for dispute in a disciplinary case involving criminal conviction, the credit to be given to him must necessarily be of a lesser extent than in other cases.
15. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant but to protect the public from persons who are unfit to practise dentistry and to maintain public confidence in the profession by upholding its high standards and good reputation.
16. We give credit to the pro bono dental and charity work done by the Defendant and the reference letters as submitted.
17. The Defendant told us that a system has been in place by affixing a label with the expiry date of the licence printed on it to all his X-ray machines. In our view, what is important is not just the labelling of the expiry dates of the licences, but also the labelling of what type of licence each machine has. The Defendant agrees that he will take our recommendation on board and will have it implemented. We agree that the risk of repetition is low.
18. Taking into consideration the nature and gravity of this case and what we have heard and read in mitigation, we order that in respect of the charge a warning letter be issued to the Defendant. We also order that the order shall not be published in the gazette.



Dr LEE kin-man, JP
Chairman
The Dental Council of Hong Kong