



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

Disciplinary Inquiry under s.18 of DRO

Defendant: Dr WONG Fai 黃暉牙科醫生 (Reg. No. D03030)

Date of hearing: 6 August 2015

1. The Defendant, Dr WONG Fai, is charged that :

“He, being a registered dentist –

- (i) on 2 September 2013 at the Kwun Tong Magistrates’ Courts, were convicted of three counts of the offence of “Failing to ensure contributions be paid to the approved trustee of a registered scheme in the prescribed manner”, contrary to sections 7A(8) and 43B(1C)(a) or 43B(1C)(b) of the Mandatory Provident Fund Schemes Ordinance, Cap.485, Laws of Hong Kong and section 122(3) of the Mandatory Provident Fund Schemes (General) Regulation, Cap. 485A, Laws of Hong Kong which is an offence punishable with imprisonment; and
- (ii) failed to report to the Dental Council of his convictions mentioned in paragraph (i) above within one month from the date of the conviction, and in relation to the fact alleged he has been guilty of unprofessional conduct.

Facts of the case

2. The Defendant’s name has been included in the General Register of this Council from 5 August 1995 to present.
3. The Defendant employed a Ms. [REDACTED] (“M [REDACTED]”) as a dental nurse for the period from 11 July 2012 to 11 November 2012 at his clinic at G/F, 11 Kwong Fuk Road, Tai Po, New Territories.

4. M■■■■'s monthly salary was HK\$7,000 at the beginning of her employment and was raised to HK\$7,500 since September 2012. The Defendant paid the salary to M■■■■ by way of cheque or bank transfer.
5. The Defendant registered on behalf of M■■■■ for the Manu-Lifestyle (MPF) Scheme with the approved trustee Manulife Provident Funds Trust Company Limited ("Manulife").
6. Section 7A(8) of the Mandatory Provident Fund Schemes Ordinance, Cap. 485 ("MPFSO") requires that an employer must ensure that Mandatory Provident Fund ("MPF") contributions in respect of an employee are paid to the approved trustee of the registered scheme within the period and in the manner prescribed by the regulations.
7. According to regulation 122(3) of the Mandatory Provident Fund Schemes (General) Regulation, Cap. 485A ("MPFS(G)R"), the employer in respect of a relevant employee must make MPF contributions to the approved trustee of the registered scheme on or before the contribution day.
8. In respect of M■■■■, the Defendant must make MPF contributions for the contribution periods from July to September 2012 on or before the contribution date, which was 10 October 2012.
9. The Defendant had only made MPF contributions for M■■■■ for the period from July to September 2012 in November 2012, which was about one and a half months after the contribution date of 10 October 2012.
10. Further, the Defendant had deducted 5% from M■■■■'s salary for September 2012 as the employee's contribution to the MPF but failed to make his own contribution for M■■■■ on or before 10 October 2012.
11. The total amount of contributions in default together with surcharge was HK\$1,403.95.
12. The Defendant was charged with three counts of the offence of "Failing to ensure contributions be paid to the approved trustee of a registered scheme in the prescribed manner", contrary to sections 7A(8) and 43B(1C)(a) or 43B(1C)(b) of the MPFSO and regulation 122(3) of the MPFS(G)R.
13. The Defendant pleaded guilty to the said three counts before the Kwun Tong Magistrates' Courts on 2 September 2013. The Defendant agreed to the Brief Facts of the case, in which he agreed that he committed the offence without a proper excuse. The Defendant was convicted on all three counts.

Burden and Standard of Proof

14. This 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. This 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.

15. There are two charges against the Defendant. This Council needs to look at all the evidence and to consider and determine each of the charges separately.

Findings of Council

16. In respect of charge (i), the Defendant does not dispute that he was convicted on 2 September 2013 before the Kwun Tong Magistrates' Courts of three counts of the offence of "Failing to ensure contributions be paid to the approved trustee of a registered scheme in the prescribed manner", contrary to sections 7A(8) and 43B(1C)(a) or 43B(1C)(b) of the MPFSO and regulation 122(3) of the MPFS(G)R. The offence was an offence punishable with imprisonment.
17. The Council is satisfied on the evidence that the Defendant has been convicted in Hong Kong of an offence punishable with imprisonment. The Council finds the Defendant guilty of charge (i).
18. In respect of charge (ii), the Defendant accepts that he had failed to report his said three convictions to the Council within one month from the date of the conviction.
19. According to paragraph 8.3 of the Code of Professional Discipline For the Guidance of Dental Practitioners in Hong Kong ("the Code"), it is the duty of a dental practitioner who has been convicted of an offence punishable with imprisonment to report the matter to the Council within one month from the date of conviction. Failure to do so may lead to disciplinary action for unprofessional conduct. In case of doubt, the conviction should be reported.
20. According to section 18(2) of the Dentists Registration Ordinance, Cap. 156 ("DRO"), "unprofessional conduct" means an act or omission of a registered dentist which would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.
21. The Defendant gave evidence before this Council. The Defendant explained that he had sought informal legal advice on the summonses from a Ms. [REDACTED] ("N"), a lawyer. The Defendant said that N had never told him that the offence was an offence punishable with imprisonment. The Defendant said that he had told N that he was a dentist and asked her if there was any consequence as a dentist. The Defendant said that N told him that failing to make MPF contribution was very frivolous, and he was therefore of the understanding that there was no consequence. The Defendant said that N had in a way misled him. However, the Defendant had not made any complaint against N for the allegedly wrong advice given by N. The Defendant explained that the reason he did not complain against N was because she was introduced to him by his friend, who is the employer of N. Apart from what the Defendant said about N of having given to him wrong legal advice, there is no other independent evidence to corroborate what the Defendant said.

22. The Defendant also told the Council that the presiding Magistrate who heard his criminal case had not told him that the offence was an offence punishable with imprisonment. The Defendant said that during the court hearings, he paid attention to the words of the Magistrate, and the Magistrate had never mentioned anything about imprisonment. This therefore reinforced his belief that the offence was not an offence punishable with imprisonment.
23. The Council has the opportunity of hearing the evidence given by the Defendant in person and looking at his demeanour. The allegation against N█ is a serious allegation against a legal professional.
24. Further, the Council takes the view that there is no obligation on the part of the Magistrate to advise the defendant on all possible punishments of any offence.
25. The purpose of regulation by the Council is to protect the public and maintain public confidence of the dental profession. The public has entrusted the dental profession with professional autonomy. In return, the dental profession has to fulfill its professional obligations in compliance with the Code, which includes the obligation of reporting any conviction punishable with imprisonment within one month from the date of the conviction.
26. The Council takes a strong view that the ultimate responsibility of reporting a conviction punishable with imprisonment lies with the Defendant. In case of doubt, the conviction should be reported.
27. The Council is satisfied on the evidence that the Defendant's failure to report to the Council of his three convictions is an act or omission of a registered dentist which would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.
28. The Council therefore finds the Defendant guilty of unprofessional conduct in respect of charge (ii).

Sentencing

29. The Defendant does not dispute the fact that he was convicted of the criminal offences. The Defendant does not dispute that he had failed to report to the Council his criminal convictions within one month from the day of his conviction.
30. The Defendant has a previous disciplinary record with this Council, which concerns a clinical case. The previous disciplinary record is not considered to be relevant for this inquiry. The Council will not take the previous disciplinary record into account.
31. In respect of charge (i), the Council takes the view that the Defendant's failure to make MPF contributions before the contribution date has certain elements of administrative error, which is beyond the control of the Defendant.

32. In respect of charge (ii), the offence of which the Defendant was convicted does not involve patient safety or elements of deception or fraud.
33. Having regard to the gravity of the case, the Council makes the following orders:-
- (a) In respect of charges (i) and (ii), the Defendant be issued a warning letter; and
 - (b) The order shall not be published in the Gazette.

A handwritten signature in black ink, appearing to read 'K.M. Lee', with a long horizontal flourish extending to the right.

Dr LEE Kin Man
Chairman
The Dental Council of Hong Kong